

Relationship Violence and Sexual Misconduct Policy Home

Relationship Violence and Sexual Misconduct Policy

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[Download the policy](#)¹

¹ <https://resources.emu.edu/confluence/download/attachments/28934925/relationship-violence-policy-aug-2020.pdf?api=v2&modificationDate=1597333653105&version=1>

SECTION 1: INTRODUCTION

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Eastern Mennonite University (EMU or the University) is committed to establishing and maintaining a community rich in equality and free from all forms of discrimination and harassment. Sexual harassment, relationship violence, and other forms of sexual misconduct are prohibited at EMU. The University will take prompt and equitable action to eliminate sexual harassment, relationship violence, and other sexual misconduct and prevent its recurrence. When the conduct has a propensity to create a hostile, manipulative, or coercive environment on campus, the University obligates itself to respond in support of all parties involved, the campus community, and others who have been impacted. The University strives to achieve this by ensuring the safety of those who have been harmed and holding accountable those who have done harm, consistent with its mission, values, and [Life Together](#)² commitment.

The purpose of this Relationship Violence and Sexual Misconduct Policy is to define sexual harassment, relationship violence, and sexual misconduct, describe the process for reporting alleged violations of this policy, outline the procedures used to investigate and resolve alleged policy violations, and identify the resources available to members of the EMU community who are involved in such reports.

In order to establish and maintain a campus community that values the dignity of all, this policy and resolution procedure commits the University to:

1. Identify the forms of sexual harassment, relationship violence and sexual misconduct that violate this policy;
2. Disseminate clear policies and procedures for responding to sexual harassment, relationship violence, sexual misconduct, and other forms of conduct prohibited under this policy that are reported to the University;
3. Develop an ongoing coordinated effort for delivering prevention and awareness programs and ongoing training and education programs (see [Appendix D: Training and Prevention Education](#)(see page 67)). This will be done so that students, faculty, and staff:
 1. May identify what behavior constitutes sexual harassment, relationship violence, and sexual misconduct; and
 2. Understand how to report such misconduct;

Engage in investigative inquiry and resolution of reports in a reliable, impartial, prompt, and equitable way;

Support those who have been harmed and hold persons accountable for established violations of this policy; and

Provide a written explanation of the rights and options for the process, supportive measures, process accommodations, and confidential services and community resources available to every student or employee that has experienced sexual harassment, relationship violence and/or sexual misconduct,

² <https://emu.edu/about/life-together>

regardless of when or where the conduct occurred ([Appendix B](#)(see page 63) and [Appendix C](#)(see page 65)).

In addition, this policy:

1. Identifies and describes the various roles of the University’s Title IX Coordinator, deputy Title IX Coordinators, Investigators, and Review Board;
2. Identifies how students, faculty, and staff can report sexual harassment, relationship violence, sexual misconduct, or other forms of conduct prohibited under this policy to the University, confidentially;
3. Identifies access to on- and off-campus resources available to Complainant(s) and Respondent(s), including the right to notify local law enforcement, be assisted in that notification, and/or decline to notify such authorities; and
4. Provides the University with a means to take all reasonable steps to identify sexual harassment, relationship violence, and sexual misconduct, support prevention of its recurrence, and repair the harmful effects to the Complainant, as appropriate.

Revised August 2020, in compliance with the Department of Education’s Title IX Final Rule released May 6, 2020.

Revised August 2019

Approved by President’s Cabinet, 2017

SECTION 2: DEFINITIONS

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The following terms are used throughout the course of this policy. Definitions of specific acts and behaviors related to sexual harassment, relationship violence, and sexual misconduct can be found in [Section 4](#)(see page 21) of the policy.

ADVISOR

The Complainant and the Respondent may each choose to be accompanied by an Advisor during any part of the process outlined in this policy. An Advisor may not contribute any information or comments during Informal or Formal proceedings but may consult privately with the party they are advising at any time during the proceedings, as long as it does not pose undue disruption to the proceedings.

CARE TEAM

The CARE (Concern, Assessment, Response, Evaluation) Team provides proactive and coordinated support for students in distress and addresses concerns about student behavior, academic progress, and personal issues, including mental health concerns for students based out of the Harrisonburg campus. The Title IX Coordinator will work with (a) CARE Team member(s) as needed to address possible academic accommodations. Core CARE Team Members include the head of the Student Life division, the Director of Residence Life, Student Accountability, and Restorative Justice, the Director of Counseling, the Coordinator of Campus Safety and Security, and the Associate Provost.

CLERY ACT

The [Clery Act](#)³ is a consumer protection law that aims to provide clarity around campus crime policy and statistics. The Clery Act requires all post-secondary institutions participating in the [Higher Education Act's \(HEA\) Title IV](#)⁴ student financial assistance programs to disclose campus crime statistics and security information. The Clery Act offers specific rights and options to students and employees who experience sexual assault, domestic violence, dating violence, and/or stalking.

COMPLAINANT

The Complainant is an individual who is alleged to be the victim of conduct that could constitute a violation of this policy, including sexual harassment or retaliation for engaging in a protected activity. The Complainant may include any member of the University community (faculty, staff, or student) who experiences alleged sexual harassment, relationship violence, sexual misconduct, and/or any

³ <https://clerycenter.org/policy-resources/the-clery-act/>

⁴ <http://www.higheredcompliance.org/resources/nps70-020614-12%20%284%29.pdf>

other conduct prohibited under this policy, even if they themselves do not make the initial report to the University. A Complainant does not have to seek formal disciplinary action to receive the supportive measures outlined for Complainants in this policy. See [Appendix B: Rights of the⁵Complainant](#)(see page 63).

CONFIDENTIAL EMPLOYEE

Confidential Employees are those employees of EMU who are exempt from reporting incidents of conduct prohibited under this policy that are disclosed to them by students or employees while in particular confidential roles. Confidential Employees include licensed mental health clinicians, auxiliary staff working in Counseling Services, licensed medical health professionals, and licensed/credentialed campus pastors acting in their roles. Disclosures that occur when the Confidential Employee is not acting in their official capacity must be reported.

Confidential Employees are prohibited from breaching confidentiality unless there is an imminent threat of harm to self or others or the disclosure is otherwise legally required or is expressly permitted by the disclosing party. Non-personally identifying, aggregate data will be shared with EMU by Confidential Employees for statistical purposes consistent with the [Clery Act⁶](#).

DEPUTY TITLE IX COORDINATOR

On EMU's Harrisonburg campus, the Deputy Title IX Coordinators fulfill the duties of the Title IX Coordinator when the Title IX Coordinator is unavailable or as the Title IX Coordinator assigns duties to them. At EMU's Lancaster campus and Washington Community Scholars' Center site, Deputy Title IX Coordinators serve as the point person for reports of sexual harassment, relationship violence, sexual misconduct, or other forms of conduct prohibited under this policy, and they work with the Title IX Coordinator to meet the needs of the parties involved. Deputy Title IX Coordinators are eligible to serve as members of the Title IX Assessment Team (see definition below).

FERPA / FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT

The [Family Educational Rights and Privacy Act, 20 U.S.C. Section 1232g; 34 C.F.R. Part 99⁷](#), or FERPA, is a federal law designed to protect the privacy of student education records. Under FERPA, universities must receive explicit consent from a student (or a student's guardian if the student is under age 18) in order to release a student's education records or personally identifiable information

⁵ <https://resources.emu.edu/confluence/display/RVSM/Appendix+C%3A++Rights+of+the+Reporting+Party>

⁶ <https://clerycenter.org/policy-resources/the-clery-act/>

⁷ <https://www.ecfr.gov/cgi-bin/text-idx?rgn=div5&node=34:1.1.1.1.33>

contained therein. FERPA also allows a student (or their guardian, if under age 18) to report and have fixed any inaccuracies in the student's records.

FERPA protects and prohibits the disclosure of all documentation related to a formal complaint, investigation, and resolution of matters involving sexual harassment, relationship violence, sexual misconduct, and/or other forms of misconduct prohibited under this policy, except as otherwise required or permitted by law.

FORMAL COMPLAINT

A Formal Complaint is a document signed electronically or in hard copy by a Complainant, or signed by the Title IX Coordinator or Deputy Title IX Coordinator alleging a violation of this policy against a Respondent and requesting that the University investigate the allegation(s). At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in the education program or activity of the University with which the Formal Complaint is filed. A Formal Complaint may be filed with the Title IX Coordinator by completing the [EMU RVSM Complaint Form](#)⁸. A Formal Complaint may alternately be filed in person, by mail, or by electronic mail, or by using the contact information found on the University's website. When the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator is not a Complainant or otherwise a party to the complaint.

GENDER EXPRESSION

Gender Expression is a person's outward expression of their gender through clothing, grooming, speech, hairstyle, body language, social interactions, and other behaviors. A person's gender expression may not conform with societal expectations of how a person of a perceived gender should present.

GENDER IDENTITY

Gender Identity is a person's internal sense of being male, female, neither, both, or another gender. The internal sense of a person's gender may be different than the sex assigned to the person at birth.

GENDER IDENTITY BIAS / GENDER BIAS

Gender Bias is a pre-formed negative opinion or attitude toward a person or group of persons based on their actual or perceived gender identity, e.g., bias against transgender or gender nonconforming individuals.

⁸ https://cm.maxient.com/reportingform.php?EasternMennoniteUniv&layout_id=8

HOSTILE ENVIRONMENT

A Hostile Environment results from sexually harassing, written, graphic, or physical conduct that is severe **or** pervasive **and** objectively offensive. This term is further defined, with examples, in [Section 4: Prohibited Conduct](#)(see page 21).

MANDATED REPORTERS

Every faculty, staff, volunteer, or third party who works with students or minors on campus is a Mandated Reporter. All Mandated Reporters and every person identified as a Campus Security Authority (defined above) under the [Clery Act](#)⁹ must immediately report to the Title IX Coordinator any knowledge, notice, and/or reports of sexual harassment, relationship violence, sexual misconduct, or other form of conduct prohibited under this policy reported to them or observed by them, including the name of the Complainant or Respondent, if known, and all other known details. This reporting can be done by calling (540) 432-4849, emailing titleixcoordinator@emu.edu¹⁰, or completing a [Campus Safety and Care Reporting Form](#)¹¹ at <https://emu.edu/safecampus/>. The University requires everyone in the campus community, including Confidential Employees, to report the suspected abuse of those under the age of 18.

PREPONDERANCE OF THE EVIDENCE

The Preponderance of the Evidence is the standard of proof used to determine whether a violation of this policy occurred. This is a standard of proof in which the totality of the evidence offered in support of a fact is greater or more convincing than the evidence that is offered in opposition to it. In other words, the Preponderance of the Evidence suggests that, with the totality of the available information, the reported version of events is more likely than not to have occurred. Preponderance of the Evidence is understood to require more than 50 percent certainty to determine responsibility for violating this policy (51% or greater).

RELATIONSHIP VIOLENCE

Relationship Violence is a broad term used by EMU to categorize types of violence, threats, coercion, or intimidation, other than sexual harassment, that occurs in the context of an intimate relationship. This term is further defined in [Section 4: Prohibited Conduct](#).

⁹ <https://clerycenter.org/policy-resources/the-clery-act/>

¹⁰ <mailto:titleixcoordinator@emu.edu>

¹¹ https://cm.maxient.com/reportingform.php?EasternMennoniteUniv&layout_id=2

RESPONDENT

A Respondent is an individual who has been reported to be responsible for conduct that could constitute a violation of this policy, including sexual harassment or retaliation for engaging in a protected activity. A Respondent may be any member of the University community (current faculty, staff, students and contracted third parties) who is alleged to have carried out an incident of sexual harassment, relationship violence, sexual misconduct, or any other conduct prohibited under this policy. [See Appendix C: Rights of the Respondent](#)(see page 65).

SEXUAL HARASSMENT

Sexual harassment is a broad term that includes quid pro quo, sexual harassment that results from unwelcome conduct, sexual assault, dating violence, domestic violence, and stalking. Each of these terms are defined, with examples, in Section 4: Prohibited Conduct.

SEXUAL MISCONDUCT

As opposed to sexual harassment defined above, sexual misconduct is a broad term used by EMU to refer to other violence of a sexual nature, and encompasses sexual exploitation and sexual misconduct that results in a hostile environment. Each of these terms are defined, with examples, in [Section 4: Prohibited Conduct](#)(see page 21).

SUPPORTIVE MEASURES

Supportive measures are the non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Such measures are designed to restore or preserve equal access to the University's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the University's educational environment, or deter sexual harassment. The University will maintain as confidential any Supportive Measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality would not impair EMU's ability to provide Supportive Measures. The Title IX Coordinator is responsible for coordinating the effective implementation of Supportive Measures which may include, for example, removal from campus housing, the issuance of a no contact order (see [Section 8.2.5.1](#)(see page 47)), or adjustment of class schedule.

THIRD PARTY

A third party is any person on campus that is not directly employed by the University but is contracted to provide services to the University community. For example, employees of Pioneer Catering, EMU's bookstore, and construction workers are third parties on campus. Third parties are considered Mandated Reporters and must disclose any sexual harassment, relationship violence, sexual misconduct, or other form of conduct prohibited under this policy reported to them or observed by them to the University.

TIMELY WARNING

A timely warning is a warning required by the [Clery Act](#)¹² that alerts the campus community to potentially dangerous circumstances. The need for a timely warning is determined by considering the nature of the act reported and the likelihood that continuing danger exists for the campus community. In cases of sexual harassment, relationship violence, sexual misconduct, or other forms of conduct prohibited under this policy, the Title IX safety team will meet to determine the need for a timely warning. If warranted, a timely warning will be issued by the Coordinator of Campus Safety and Security, who has the final authority to make the determination according to [Virginia law](#)¹³.

TITLE IX SAFETY TEAM

The Title IX Safety Team is composed of the Title IX Coordinator, the Coordinator of Campus Safety and Security, and the head of the Student Life Division. The Title IX Safety Team receives all electronic Campus Safety Incident Form submissions. After a report is received, the Safety Team will determine the need for administrative leave (in the case of employees), emergency removal (in the case of students), and/or a timely warning to be issued within the 72 hour notice to the Commonwealth's Attorney and local law enforcement, and will, if deemed necessary make those notifications. A timely warning is required by the [Clery Act](#)¹⁴ and alerts the campus community to potentially dangerous circumstances. The need for a timely warning is determined by considering the nature of the act reported and the likelihood that continuing danger exists for the campus community. If warranted, a timely warning will be issued by the Coordinator of Campus Safety and Security, who has the final authority to make the determination. In cases involving an employee, the Director of Human Resources will also be consulted.

¹² <https://clerycenter.org/policy-resources/the-clery-act/>

¹³ <http://law.lis.virginia.gov/vacode/title23.1/chapter8/section23.1-806/>

¹⁴ <https://clerycenter.org/policy-resources/the-clery-act/>

TITLE IX

[Title IX](#)¹⁵ is a federal law that prohibits sex discrimination in educational institutions that receive federal funding. Under [Title IX](#)¹⁶, no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.

TITLE IX ASSESSMENT TEAM

The Title IX Assessment Team consists of the [Title IX Coordinator](#)¹⁷ and one or more Deputy Title IX Coordinators, identified by the Title IX Coordinator for assistance according to their primary role in the University system. The Title IX Assessment Team will include the Director of Human Resources when an employee is involved in a report. The Title IX Assessment Team facilitates disciplinary outcomes, if any, for the Respondent in an informal resolution process or refers cases to a formal process as necessary. See [Appendix A, Section A.3.3.2](#)(see page 51) for more information.

TITLE IX COORDINATOR

The Title IX Coordinator is responsible for overseeing and coordinating the resolution of all reports of sex discrimination covered by this policy, and identifying and addressing any patterns or systemic concerns that arise during the review of such reports at EMU. The coordinator's responsibilities include oversight of a prompt, fair, equitable investigation and resolution process for reports of sexual harassment, relationship violence, sexual misconduct, or other forms of conduct prohibited under this policy. The Title IX Coordinator also evaluates trends on campus by using information reported to them and makes recommendations for campus-wide training and education programs and other remedial actions designed to eliminate sexual harassment, relationship violence and sexual misconduct, prevent its recurrence, and address its effects.

In addition to the Title IX Coordinator's core responsibilities, additional services to the University community include working with campus resources to provide ongoing training to new and current students, faculty, and staff on Title IX issues and procedures. The University will ensure that Mandated Reporters know how to respond appropriately to reports of prohibited conduct, that they are obligated to report sexual harassment, relationship violence, sexual misconduct, or other forms of conduct prohibited under this policy to the Title IX Coordinator, and that all employees understand how to respond to such reports.

¹⁵ <https://www.ecfr.gov/cgi-bin/text-idx?SID=69a8d5e1a8a4e43ee9%201685c254404%202c2&mc=true&node=pt34.1.106&rgn=div5#sp34.1.106.c>

¹⁶ <https://www.ecfr.gov/cgi-bin/text-idx?SID=69a8d5e1a8a4e43ee9%201685c254404%202c2&mc=true&node=pt34.1.106&rgn=div5#sp34.1.106.c>

¹⁷ <https://www.ecfr.gov/cgi-bin/text-idx?SID=69a8d5e1a8a4e43ee9%201685c254404%202c2&mc=true&node=pt34.1.106&rgn=div5#sp34.1.106.c>

¹⁷ <https://emu.edu/faculty-staff/?show=rothrb>

Title IX Coordinator: 540-432-4849; titleixcoordinator@emu.edu¹⁸

TITLE IX INVESTIGATOR

Title IX Investigators serve as designees for the Title IX Coordinator to carry out the investigation of cases and prepare a written investigation report. Title IX Investigators conduct thorough and impartial investigations of a Formal Complaint, including interviewing the Complainant(s), the Respondent(s), witnesses, or others who may have relevant information, and collecting any other evidence deemed relevant to a case.

TITLE VII

[Title VII of the Civil Rights Act of 1964](#)¹⁹ is a federal law that prohibits employers from discriminating against employees on the basis of sex, race, color, national origin, and religion. Particularly of relevance to this policy are the prohibitions that Title VII establishes towards sex-based discrimination, including discrimination on the basis of pregnancy, childbirth, related medical conditions, or sexual harassment in the workplace carried out by either the institution or other coworkers.

¹⁸ <mailto:titleixcoordinator@emu.edu>

¹⁹ <https://www.eeoc.gov/laws/statutes/titlevii.cfm>

SECTION 3: SCOPE OF POLICY

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Eastern Mennonite University prohibits harassment of, and discrimination against any and all EMU community members. This policy applies to students who are registered or enrolled in credit- or non-credit-bearing coursework (students); all University employees, consisting of full-time and part-time faculty and staff, including temporary and adjunct roles (employees); and contractors, vendors, visitors, volunteers, guests (third parties) on any EMU campus or site.

This policy pertains to acts of sexual harassment, relationship violence, sexual misconduct, and other forms of prohibited conduct that may be based on sex or gender and are committed by or against students, employees, and third parties (See [Section 4: Prohibited Conduct](#) (see page 21))

This policy applies when:

1. The conduct occurs on University property or other property owned or controlled by the University;
2. The conduct occurs in the context of a University employment or educational program or activity including, but not limited to, University-sponsored cross-cultural, research, online, or internship/practicum programs;
3. The conduct occurs off-campus but is likely to have a substantial adverse effect on a member of the EMU community;
4. The conduct occurs outside the context of a University employment or educational program or activity but has continuing adverse effects on, or has the propensity to create a hostile environment for students, employees, or third parties while on University property, other property owned or controlled by the University, or in any University employment or education program/activity; or
5. The Complainant must be participating in or attempting to participate in EMU's education programs or activities.

Supportive Measures may be available to the Complainant(s) in the event that a report does not fall within any of the above criteria.

3.1. NOTICE OF NON-DISCRIMINATION

The University is committed to maintaining an environment free from harassment and discrimination for everyone. EMU does not discriminate on the basis of race, sex, national origin, religion, sexual orientation, gender identity or expression, or any other protected status in any of its education or employment programs and activities. This policy prohibits specific forms of behavior that may violate [Title IX of the Education Amendments of 1972](#)²⁰ (Title IX); relevant

²⁰<https://www.ecfr.gov/cgi-bin/text-idx?SID=69a8d5e1a8a4e43ee9%201685c254404%202c2&mc=true&node=pt34.1.106&rgn=div5#sp34.1.106.c>

SID=69a8d5e1a8a4e43ee9%201685c254404%202c2&mc=true&node=pt34.1.106&rgn=div5#sp34.1.106.c

provisions of the [Violence Against Women Reauthorization Act of 2013](#)²¹ (VAWA); [Title VII of the Civil Rights Act of 1964](#)²² (Title VII); the [Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act](#)²³ (Clery Act); and corresponding state laws and regulations in Virginia, Pennsylvania, and Washington, DC.

The University recognizes that it is important to coordinate this policy with other existing policies related to conduct, harassment and discrimination, knowing that sex discrimination can occur in conjunction with discrimination or harassment related to a person's race, ethnicity, national origin, religion, age, disability, and/or other protected status, as well as other prohibited misconduct. Reports that include both sex discrimination and other prohibited discrimination, harassment, or misconduct may be adjudicated under this policy and any related University policies, including those pertaining to other protected status(es) (for example, EMU's bias policy). Questions about which policy applies in a specific instance should be directed to the Title IX coordinator.

This policy covers sexual harassment, relationship violence, sexual misconduct, and other prohibited misconduct. Employees should seek further information regarding equal opportunity, disability, harassment, discrimination, and retaliation that is not based on sex or gender discrimination with the Director of Human Resources at (540) 432-4148 or hr@emu.edu²⁴.

3.2. BIAS

Bias is prejudice in favor of or against one thing, person, or group compared with another, usually in a way considered to be unfair. EMU makes every effort to recognize and mitigate the impacts of bias. The University strongly encourages all parties involved to identify, name, and work to address the various forms of bias that may impact the campus community.

3.3. CONFLICT OF INTEREST

Conflict of interest means that a person may have the potential to undermine the impartiality of a process due to the possibility of a conflict between the person's self-interest and/or professional or public interest. The University makes every effort to identify and prevent conflicts of interest at any and every level. Should a conflict of interest be identified, the University will identify and utilize alternative (up to and including external) resources.

²¹ <https://www.congress.gov/bill/113th-congress/senate-bill/47>

²² <https://www.eeoc.gov/laws/statutes/titlevii.cfm>

²³ <https://clerycenter.org/policy-resources/the-clery-act/>

²⁴ <mailto:hr@emu.edu>

3.4. PRIVACY AND CONFIDENTIALITY

The University is committed to protecting the privacy of all individuals involved in the investigation and resolution of a report under this policy. The University will provide assistance to help students, employees, and third parties make informed choices. With respect to any report under this policy, the University will make reasonable efforts to protect the privacy of participants, in accordance with applicable state and federal law, while balancing the need to gather information to assess the report and to take steps to eliminate the sexual harassment, relationship violence, sexual misconduct, and other misconduct; prevent its recurrence; and remedy its effects. Privacy and confidentiality have distinct meanings under this policy.

3.4.1. PRIVACY

Privacy means that information related to a report of sexual harassment, relationship violence, sexual misconduct, or other forms of conduct prohibited under this policy will be shared with a limited circle of University employees who have a legitimate need to assist in the assessment, investigation, and adjudication of the report. All employees who are involved in the University's response to reports of sexual harassment, relationship violence, sexual misconduct, or other forms of conduct prohibited under this policy receive guidance and must comply with practices that safeguard private information in accordance with federal and state law.

The privacy of student education records will be protected in accordance with the [Family Educational Rights and Privacy Act](#)²⁵ (FERPA). All documentation related to a student's report, investigation, and resolution are protected by FERPA²⁶ and will not be released, except as required by law. Non-identifying information about a report will be shared with Campus Safety and Security to comply with the [Clery Act](#)²⁷. All publicly available record keeping, including those required under Clery such as the daily crime log, annual security report, and timely warnings, are maintained without the inclusion of personally identifiable information. In addition, any person involved in a case of sexual harassment, relationship violence, sexual misconduct, and/or any other form of conduct prohibited under this policy may request that their directory information on file be removed from public sources by contacting the Title IX Coordinator at titleixcoordinator@emu.edu²⁸ or by calling 540-432-4849.

The privacy of an individual's medical and related records is generally protected by the [Health Insurance Portability and Accountability Act](#)²⁹ (HIPAA), except

25 <https://www.ecfr.gov/cgi-bin/text-idx?rgn=div5&node=34:1.1.1.1.33>

26 <https://www.ecfr.gov/cgi-bin/text-idx?rgn=div5&node=34:1.1.1.1.33>

27 <https://clerycenter.org/policy-resources/the-clery-act/>

28 <mailto:titleixcoordinator@emu.edu>

29 <https://www.hhs.gov/hipaa/for-professionals/privacy/laws-regulations/index.html>

health records protected by FERPA³⁰ and by Virginia’s Health Records Privacy Act, Va. Code § 32.1-127.1:03³¹. Access to an employee’s personnel records may also be restricted.

3.4.2. CONFIDENTIALITY

Confidentiality means that information shared by an individual with Confidential Employees cannot be revealed to any other individual without the express permission of the disclosing party. The University has designated groups of individuals who can have privileged communications as Confidential Employees and are therefore exempt from reporting incidents prohibited under this policy that are disclosed to them while they are serving in particular confidential roles.

Disclosures which occur while Confidential Employees are acting in their role as a Confidential Employee will remain confidential. Disclosures that occur when the Confidential Employee is not acting in this official capacity must be reported on the [Safety and Care Reporting Form](#)³² or directly to the Title IX Coordinator.

Confidential Employees, which include licensed mental health clinicians, auxiliary staff working in Counseling Services, licensed medical health professionals, and licensed/credentialed campus pastors acting in their roles, are prohibited from breaching confidentiality unless there is an imminent threat of harm to self or others or the disclosure is otherwise legally required or is expressly permitted by the disclosing party. Non-personally identifying, aggregate data will be shared with EMU by Confidential Employees for statistical purposes consistent with the [Clery Act](#)³³.

The University will document non-identifying information in the campus incident log as required by the [Clery Act](#)³⁴. Should the university determine there is a serious or imminent threat, a timely warning notice will be shared with the campus community.

The University will also honor the confidentiality of any Supportive Measures provided to the Complainant(s) and the Respondent(s), to the extent that maintaining such privacy does not impair the University’s ability to provide the Supportive Measures.

3.5. EMPLOYEE REPORTING RESPONSIBILITIES

[Title IX](#)³⁵ uses the concept of notice, and imposes obligations for a “prompt and effective remedy” on colleges and universities when notice of sex and/or gender discrimination or harassment is given to an official with authority. An Official with

30 <https://www.ecfr.gov/cgi-bin/text-idx?rgn=div5&node=34:1.1.1.1.33>

31 <https://law.lis.virginia.gov/vacode/title32.1/chapter5/section32.1-127.1:03/>

32 https://cm.maxient.com/reportingform.php?EasternMennoniteUniv&layout_id=2

33 <https://clerycenter.org/policy-resources/the-clery-act/>

34 <https://clerycenter.org/policy-resources/the-clery-act/>

35 <https://www.ecfr.gov/cgi-bin/text-idx?>

SID=69a8d5e1a8a4e43ee9%201685c254404%202c2&mc=true&node=pt34.1.106&rgn=div5#sp34.1.106.c

Authority (“OWA”) means an EMU employee who is explicitly vested with the responsibility to implement corrective measures for harassment, discrimination, and/or retaliation on behalf of EMU. The following members of the EMU community are an OWA:

- University President
- Provost
- Associate & Assistant Provost
- Dean of School of Social Sciences & Professions
- Dean of School of Theology, Humanities, & Performing Arts
- Dean of School of Science, Engineering, Art, and Nursing
- Dean of Students
- Director of Human Resources
- Title IX Coordinator
- Director of Athletics
- Student Life Directors
- Deputy Title IX Coordinators

Notice means that an employee, student, or third-party informs the Title IX Coordinator or other OWA of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct, which includes the sexual harassment, relationship violence, and other sexual misconduct prohibited under this policy.

All Mandated Reporters must immediately report to the Title IX Coordinator any incident of alleged sexual harassment, relationship violence, sexual misconduct, or other forms of conduct prohibited under this policy reported to them or observed by them, including the name of the Complainant and Respondent, if known, and all known details. This reporting can be done by calling (540) 432-4849, emailing titleixcoordinator@emu.edu³⁶, or completing a campus safety incident form at [Safety and Care Reporting Form](https://emu.edu/safecampus/)³⁷. The University requires everyone in the campus community, including Confidential Employees, to report suspected abuse of children.

Faculty and staff who receive disclosures through classroom discussions or assignments are not under obligation to report to the Title IX Coordinator if the intent of the individual was not to seek support services or make an official report to the University. The determination as to intent may be made in conversation between the employee and student, and/or in consultation with the Title IX Coordinator.

Public awareness events, open forums or disclosures made during formal Institutional Review Board projects are not considered a report or notice under this policy and therefore will not initiate the University’s obligation to investigate these particular incident(s). Such events may, however, inform the need for campus-wide education and prevention efforts.

³⁶ <mailto:titleixcoordinator@emu.edu>

³⁷ <https://emu.edu/safecampus/>

Complainants who wish to make a confidential disclosure have multiple Confidential Resources available to them. For a full listing see [Appendix³⁸E](#)(see [page 68](#)).

3.6. REQUEST FOR ANONYMITY BY A REPORTING PARTY

Complainants who experience sexual harassment, relationship violence, sexual misconduct, or other forms of conduct prohibited under this policy may request anonymity, including that their name not be shared with the Respondent, that the Respondent not be notified of the report, and/or that no investigation occur. When the Complainant requests to either the Mandated Reporter or the Title IX Coordinator that their identity not be shared with the Respondent or that the University not pursue an investigation, the University will balance this request with the University's responsibility to provide a safe and non-discriminatory environment for all University community members as required under the [Clery Act³⁹](#). Consideration of requests for anonymity will take the following dynamics into account:

1. The respective ages and roles of the Complainant and the Respondent;
2. Whether there have been other reports of sexual harassment, relationship violence, sexual misconduct, or other forms of conduct prohibited under this policy involving the Respondent;
3. Whether the circumstances suggest there is a risk of the Respondent committing additional acts of sexual harassment, relationship violence, sexual misconduct, or other forms of conduct prohibited under this policy;
4. Whether the Respondent has a history of arrests or records indicating a history of violence;
5. Whether the report indicates the Respondent has threatened further sexual violence or other violence against the Complainant and other individuals involved;
6. Whether the reported conduct was committed by multiple individuals;
7. Whether the circumstances suggest there is a risk of future acts of sexual harassment, relationship violence, sexual misconduct, or other forms of conduct prohibited under this policy under similar circumstances;
8. Whether the reported conduct was perpetrated with a weapon;
9. Whether the University possesses other means to obtain relevant evidence (e.g., security cameras or security personnel, physical evidence).

The Complainant's request for anonymity and allegations of misconduct will be communicated to the University via the [EMU RVSM Complaint Form⁴⁰](#) reviewed and to the extent possible honored, while giving consideration to an assessment of the underlying allegation(s) and to determine if Supportive Measures can be provided while honoring such a request. Anonymous complaints typically limit

³⁸ <https://resources.emu.edu/confluence/display/RVSM/Appendix+F%3A+Confidential+Resources>

³⁹ <https://clerycenter.org/policy-resources/the-clery-act/>

⁴⁰ https://cm.maxient.com/reportingform.php?EasternMennoniteUniv&layout_id=8

the University's availability to investigate, respond, and provide remedies, depending on what information is shared. When the University is unable to act consistent with the Complainant(s) request for anonymity, the Title IX Coordinator will inform the Complainant(s).

As a part of the University's response to a Formal Complaint, the Complainant's identity will be disclosed to the Respondent(s) and other individuals who need to know in order to protect the safety of the campus community. In such cases, the University will notify the Complainant that it intends to move forward with its grievance process, including an investigation, but in no event will the Complainant(s) be required to participate in any such actions undertaken by the University.

SECTION 4: PROHIBITED CONDUCT

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The University prohibits the following forms of conduct under this policy no matter where the behavior occurs, whether in person or online:

4.1. SEXUAL HARASSMENT

Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved. Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

4.1.1. QUID PRO QUO

An employee of the University who conditions the provision of University aids, benefits, or services on an individual's participation in unwelcome sexual conduct.

4.1.2. SEXUAL HARASSMENT

Sexual harassment involves the unwelcome conduct determined by a reasonable person to be so severe, pervasive, **and** objectively offensive that it effectively denies a person equal access to the University's educational program or activity.

4.1.3. SEXUAL ASSAULT

Sexual assault is any sexual act directed against the Complainant, without their consent, including instances when the Complainant is incapable of giving consent. Sexual assault is any offense that meets the definition of rape, fondling, incest, or statutory rape.

4.1.3.1. Forcible Rape

Forcible rape is penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of the Respondent, without the consent of the Complainant.

4.1.3.2. Forcible Fondling

Forcible fondling is the touching of the Complainant's private body parts (including genitalia, groin, breasts, or buttocks) by the Respondent for the purpose of sexual gratification, without the Complainant's consent, including instances when the Complainant is incapable of giving consent because of age or because of temporary or permanent mental incapacity.

4.1.3.3. Non-Forcible Sex Offenses

1. Incest. Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by the Commonwealth of Virginia, the Commonwealth of Pennsylvania, or the District of Columbia, depending upon where the incident occurred.
2. Statutory Rape. Statutory rape is non-forcible sexual intercourse with a person who is under the statutory age of consent, age 18 in the Commonwealth of Virginia and the District of Columbia, age 16 in the Commonwealth of Pennsylvania, depending upon where the incident occurred.

4.1.3.4. Forcible Sodomy

Forcible sodomy is the oral or anal sexual intercourse with the Complainant, forcibly, and against the Complainant's will. Forcible sodomy is also the oral or anal sexual intercourse with the Complainant, not forcibly or against the Complainant's will, in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

4.1.3.5. Sexual Assault with an Object

Sexual assault with an object is the use of an object or instrument to penetrate, however slightly, the genital or anal opening of the body of the Complainant, forcibly, and/or against the Complainant's will (non-consensually).

4.1.3.6. Examples of Sexual Assault

Examples of behavior that may constitute sexual assault include, but are not limited to, the following:

1. Engaging in sexual activity with an unconscious or semi-conscious person;
2. Engaging in sexual activity with someone who is asleep or passed out;
3. Engaging in sexual activity with someone who has said “no” or has otherwise indicated through non-verbal communication that they do not consent to sexual activity;
4. Engaging in sexual activity with someone who is vomiting, unable to stand without assistance, or has to be carried to bed;
5. Allowing another person to engage in sexual activity with your sexual partner without the partner’s consent;
6. Requiring any person to perform any sexual activity as a condition of acceptance into any organization affiliated with the University;
7. Telling someone you will “out” them if they don’t engage in sexual activity (e.g., threatening to disclose the person’s sexual orientation without their consent); or
8. Facilitating or assisting in a sexual assault, including purchasing or providing alcohol or drugs to further a sexual assault.

4.1.4. DATING VIOLENCE

Dating violence means violence, on the basis of sex, committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship will be determined based on the Complainant’s statement, taking into consideration the following factors:

1. The length of the relationship;
2. The type of relationship; and
3. The frequency of interaction between the persons involved in the relationship. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include any acts covered under the definition of domestic violence.

4.1.5. DOMESTIC VIOLENCE

Domestic violence is violence, on the basis of sex, committed by a current or former spouse or intimate partner of the Complainant, by a person (a) with whom the Complainant shares a child in common; (b) who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner; (c) similarly situated to a spouse of the Complainant under the domestic or family violence laws of the Commonwealth of Virginia, the Commonwealth of Pennsylvania, or the District of Columbia, depending upon where the incident occurred; or (d) any other person against an adult or youth Complainant who is protected from that person’s acts under the domestic or family violence laws of the Commonwealth of Virginia, the Commonwealth of Pennsylvania, or the District of Columbia, depending upon where the incident occurred. To be an

incident of domestic violence, the relationship between the Respondent and the Complainant must be more than two roommates living together.

4.1.6. STALKING

Stalking occurs when a person engages in a course of conduct, on the basis of sex, directed at a specific person under circumstances that would cause a reasonable person to fear for their safety or the safety of others, or to suffer substantial emotional distress:

1. Course of conduct means two or more acts, including but not limited to acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about the Complainant, or interferes with the Complainant's property.
2. A reasonable person means a person under similar circumstances and with similar identities to the Complainant.
3. Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.
4. Stalking includes cyber-stalking, a particular form of stalking in which a Respondent uses electronic media, such as the internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact.

4.2. RELATIONSHIP VIOLENCE

Relationship violence is a broad term used by EMU to categorize types of violence, threats, coercion, or intimidation, other than sexual harassment, that occurs in the context of an intimate relationship, often including emotional, psychological, physical, or fiscal abuse, which results in a hostile environment. An incident of relationship violence can consist of a single act or a pattern of acts. Incidents of relationship violence can occur separate from or in tandem with incidents of sexual misconduct and/or sexual harassment.

4.3. SEXUAL MISCONDUCT

This policy prohibits sexual misconduct, which is defined to include other forms of misconduct, on the basis of sex, that is not within the definition of sexual harassment. Sexual misconduct encompasses sexual exploitation, indecent exposure, and sexual discrimination (definitions provided below). Sexual misconduct may occur through physical violence, the threat of violence, and/or coercion.

An incident of sexual misconduct can consist of a single act or a pattern of acts. Incidents of sexual misconduct can occur separate from or in tandem with incidents of relationship violence.

4.3.1. SEXUAL EXPLOITATION

Sexual exploitation is purposely or knowingly doing any of the following:

1. Causing the impairment or incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give affirmative consent to sexual activity;
2. Allowing third parties to observe sexual activity from a hidden location (e.g., a closet) or through electronic means (e.g., live-streaming of images);
3. Engaging in voyeurism (e.g., watching private sexual activity without the consent of the participants or viewing another person's private body parts in a place where that person would have a reasonable expectation of privacy);
4. Recording or photographing sexual activity and/or a person's private body parts (including genitalia, groin, breasts, or buttocks) without affirmative consent;
5. Disseminating or posting images of private sexual activity and/or a person's private body parts (including genitalia, groin, breasts, or buttocks) without affirmative consent;
6. Prostituting oneself or another person.

4.3.2. SEXUAL DISCRIMINATION

Sexual discrimination is defined as discrimination, on the basis of sex, in the form of unwelcome and harassing conduct that results in a hostile environment. Sexual discrimination includes unwelcome sexual advances, unwelcome requests for sexual favors, or other unwelcome behavior of a sexual nature.

4.3.3. INDECENT EXPOSURE

Indecent exposure occurs when a University employee, student, or vendor purposely and knowingly exposes their sexual organs to the Complainant without the Complainant's consent.

4.4. OTHER PROHIBITED CONDUCT

4.4.1. GENDER-BASED HARASSMENT

Gender-based harassment includes harassment based on gender, sexual orientation, gender identity, or gender expression that may include acts of aggression, intimidation, or hostility, whether verbal or non-verbal, graphic, physical, or otherwise, even if the acts do not involve conduct of a sexual nature, when the conditions outlined below are present:

1. Submission to, or rejection of, such conduct is made, either explicitly or implicitly, a term or condition of a person's employment, academic standing, or participation in any University programs and/or activities (quid pro quo harassment); or
2. Submission to or rejection of such conduct is used as the basis for University decisions affecting the individual (quid pro quo harassment); or
3. Conduct that creates a hostile environment.

4.5. RETALIATION

Retaliation is the prohibited conduct of the University or any member of the EMU community to intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by law or this policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sex harassment, but arise out of the same facts or circumstances as a report or formal complaint under this policy, for the purpose of interfering with any right or privilege secured by this policy constitutes retaliation.

4.6. HOSTILE ENVIRONMENT

A hostile environment is created when unwelcome conduct of a sexual or gender-based nature unreasonably interferes with, limits, or effectively denies an individual's ability to participate in or benefit from their employment or educational program/activity, or creates an intimidating, threatening or abusive employment, educational, and/or living environment. It will be necessary, but not enough, that the conduct was unwelcome to the person who was harassed. The University will also need to find that a reasonable person in the individual's position would have perceived the conduct as undesirable or offensive in order for that conduct to create or contribute to a hostile environment. To make the ultimate determination of whether a hostile environment exists for an individual, the University considers a variety of factors, including:

1. The type, frequency, and duration of the conduct;
2. The identity and relationships of persons involved;
3. The number of individuals involved;
4. The location of the conduct and the context in which it occurred; and,
5. The degree to which the conduct affected one or more student's education or employee's employment.

A hostile environment results from harassing verbal, written, graphic, or physical conduct that is severe **or** pervasive **and** objectively offensive. A single, isolated incident of sexual or gender-based harassment may, based on the facts and circumstances, be sufficient to create a hostile environment. Likewise, a series of incidents, whether occurring close in time or not to each other, may be sufficient to create a hostile environment, even if each incident is not particularly severe. Examples of a hostile environment include:

1. Calling someone by a sexually oriented or demeaning name;
2. Giving someone unwanted gifts of a sexual nature;
3. Displaying sexually suggestive materials or sending notes, email, or jokes to a person that are sexually explicit;
4. Touching someone sexually without their consent;
5. Massaging someone without permission;
6. Brushing up against someone repeatedly;
7. Continuing to ask out a person who has already said no; or
8. Exposing private parts to another person.

4.6. COMPLICITY

Complicity is any act taken with the purpose of aiding, facilitating, protecting, promoting, or encouraging the commission of an act of relationship violence, sexual misconduct, sexual harassment, or other forms of conduct prohibited under this policy by another person.

Anyone who is Complicit in any of the prohibited acts outlined in this policy will be in violation of this policy and will be subject to disciplinary action.

4.7. VIOLATIONS OF LAW

Behavior that violates this policy may also constitute a crime under the laws of the jurisdiction in which the incident occurred. For example, the Commonwealth of Virginia criminalizes and punishes some forms of sexual assault, intimate partner violence, sexual exploitation, stalking, and physical assault. The criminal statutes that may apply in cases of physical assault and intimate partner violence are found in various sections of [Chapter 4, Articles 1 \(Homicide\) and 4 \(Assaults and Bodily Woundings\)](#), of [Title 18.2 of the Code of Virginia](#).⁴¹ The criminal statutes relating to sexual assault are found in [Sections 18.2-61 to 18.2-67.10](#) of

⁴¹ <https://law.lis.virginia.gov/vacode/title18.2/chapter4/>

the Code of Virginia.⁴² Section 18.2-60.3 of the Code of Virginia⁴³ defines and identifies the penalty for criminal stalking. Finally, Sections 18.2-386.1 and 18.2-386.2 of the Code of Virginia⁴⁴ provide for criminal penalties in some cases of sexual exploitation. This compilation of criminal statutes is not exhaustive, but is offered to notify the University community that some forms of conduct prohibited under this policy may also constitute crimes under Virginia, Pennsylvania and the District of Columbia law, which may subject a person to criminal prosecution and punishment in addition to any sanctions under this policy.

42 <https://law.lis.virginia.gov/vacodefull/title18.2/chapter4/article7/>

43 <https://law.lis.virginia.gov/vacode/title18.2/chapter4/section18.2-60.3/>

44 <https://law.lis.virginia.gov/vacodefull/title18.2/chapter8/article5/>

SECTION 5: CONSENT

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5.1 CONSENT

Consent is the standard to which EMU holds its students and employees. Consent refers to consent to engage in sexual activity that is:

1. Informed, meaning knowingly given by both parties;
2. Voluntary, meaning freely given, not forced or coerced; and
3. Active, meaning that through the demonstration of clear words or actions, a person has indicated permission to engage in mutually agreed-upon sexual activity.

In the context of this definition, sexual activity is defined as sexual intercourse and/or sexual contact.

Sexual intercourse is any intentional penetration, however slight, with any object or body part (as described below), performed by a person upon another person.

Sexual intercourse includes:

1. Vaginal penetration by a penis, object, tongue, or finger;
2. Anal penetration by a penis, object, tongue, or finger; and
3. Any contact, no matter how slight, between the mouth of one person and the genitalia of another person.

Sexual contact is any intentional sexual touching, however slight with any object or body part (as described below), performed by a person upon another person.

Sexual contact includes:

1. Intentional touching of the breasts, buttocks, groin, or genitals, whether clothed or unclothed, or intentionally touching another with any of these body parts; or
2. Making another touch you or themselves with or on any of these body parts.

Nonconsensual sexual contact refers to sexual contact that is enacted upon one party by another party without the person(s) committing the act having obtained affirmative consent.

A person who wants to engage in a specific sexual activity is responsible for obtaining consent for that activity. Lack of protest does not constitute consent. Lack of resistance does not constitute consent. Silence and/or passivity also do not constitute consent. Relying solely on non-verbal communication before or during sexual activity can lead to misunderstanding and may result in a violation of this policy.

It is important not to make assumptions about whether a potential partner is consenting. In order to avoid confusion or ambiguity, participants must talk with one another before and during engaging in sexual activity in order to ensure that the activity is and remains consensual. If confusion or ambiguity (including

emotional and/or physical freezing) arises during sexual activity, participants are encouraged to stop and clarify a mutual willingness to continue that activity.

5.1.1. FORCE

Consent cannot be obtained by force. Force includes the use of physical violence, threats, manipulation, intimidation, and/or coercion.

Physical violence means that a person is exerting control over another person through the use of physical force. Examples of physical violence include but are not limited to hitting, punching, slapping, kicking, restraining, choking, and brandishing or using any weapon.

Threats are words or actions that would compel a reasonable person to engage in unwanted sexual activity. Examples include threats to harm a person or their loved ones physically, to reveal private information to harm a person's reputation, or to cause a person professional, academic, or economic harm.

Intimidation is an implied threat that menaces or causes reasonable fear in another person. A person's size alone does not constitute intimidation; however, a person's size may be used in a way that constitutes intimidation (e.g., blocking access to an exit).

Coercion is the use of pressure to compel another individual to initiate, engage in, or continue sexual activity against that individual's will. Coercion can include a wide range of behaviors, including intimidation, manipulation, threats, and blackmail. A person's words or conduct are sufficient to constitute coercion if they wrongfully impair another individual's freedom of will and ability to choose whether or not to engage in sexual activity. Examples of coercion include, but are not limited to:

1. Threatening to "out" someone based on sexual orientation, gender identity, or gender expression;
2. Threatening to harm oneself if the other party does not engage in the sexual activity; or
3. Grooming an individual for the purposes of sexual harassment, relationship violence, and/or sexual misconduct.

In evaluating whether coercion was used, the University will consider the frequency of the application of the pressure, the intensity of the pressure, the degree of isolation of the person being pressured, the duration of the pressure, and the power differential between parties.

5.1.2. INCAPACITATION

Consent cannot be gained by taking advantage of the incapacitation of another, when the person initiating sexual activity knew or reasonably should have known that the other was incapacitated.

Incapacitation describes an individual who lacks the ability to make informed, rational judgments about whether or not to engage in sexual activity and

therefore cannot consent to sexual activity. A person who is incapacitated is unable, temporarily or permanently, to give consent because of mental or physical helplessness, sleep, unconsciousness, or lack of awareness that sexual activity is taking place. A person may be incapacitated as a result of the consumption of alcohol or other drugs, or due to a temporary or permanent physical or mental health condition.

5.1.2.1. Incapacitation and the Use of Drugs or Alcohol

Incapacitation may result from the use of alcohol and/or drugs. Incapacitation is a state beyond drunkenness or intoxication. Warning signs that a person may be approaching incapacitation may include:

1. Slurred speech
2. Vomiting
3. Unsteady gait
4. Combativeness
5. Emotional volatility
6. Fainting or loss of consciousness

Incapacitation as a result of the consumption of alcohol and/or drugs impairs decision-making abilities, diminishes awareness of consequences, compromises one's ability to make informed judgments, and limits one's capacity to understand the implications and consequences of an act. It is not possible for a party to obtain consent from someone who is incapacitated. It is not possible for someone who is incapacitated to give consent. If there is any doubt as to the level or extent of an individual's intoxication or impairment, sexual contact or activity should not be initiated or should be immediately stopped.

In evaluating consent and in cases of alleged incapacitation, the University asks two questions: (1) did the person initiating sexual activity know that the other party was incapacitated? and if not, (2) should a sober, reasonable person in the same situation have known that the other party was incapacitated? If the answer to either of these questions is "yes," consent was absent, and the conduct was a violation of this policy.

5.1.3. OBTAINING CONSENT

Consent to one form of sexual activity does not, by itself, constitute consent to another form of sexual activity. For example, one should not presume that consent to oral-genital contact constitutes consent to vaginal or anal penetration. Consent to sexual activity on a prior occasion does not, by itself, constitute consent to future sexual activity. In cases of prior relationships, the manner and nature of prior communications between the parties and the context of the relationship may have a bearing on the presence of consent.

Consent may be withdrawn at any time. An individual who seeks to withdraw consent must communicate, through clear words or actions, a decision to cease the sexual activity. Once consent is withdrawn, the sexual activity must cease immediately.

5.1 AFFIRMATIVE CONSENT

Affirmative consent is the standard to which EMU holds its students and employees. Affirmative consent refers to consent to engage in sexual activity that is:

- a. informed, meaning knowingly given by both parties;
- b. voluntary, meaning freely given, not forced or coerced; and
- c. active, meaning that through the demonstration of clear words or actions, a person has indicated permission to engage in mutually agreed-upon sexual activity.

In the context of this definition, sexual activity is defined as sexual intercourse and/or sexual contact.

Sexual intercourse is any intentional penetration, however slight, with any object or body part (as described below), performed by a person upon another person. Sexual intercourse includes:

- a. vaginal penetration by a penis, object, tongue, or finger;
- b. anal penetration by a penis, object, tongue, or finger; and
- c. any contact, no matter how slight, between the mouth of one person and the genitalia of another person.

Sexual contact is any intentional sexual touching, however slight with any object or body part (as described below), performed by a person upon another person. Sexual contact includes:

- a. intentional touching of the breasts, buttocks, groin, or genitals, whether clothed or unclothed, or intentionally touching another with any of these body parts; or
- b. making another touch you or themselves with or on any of these body parts.

Nonconsensual sexual contact refers to sexual contact that is enacted upon one party by another party without the person(s) committing the act having obtained affirmative consent.

A person who wants to engage in a specific sexual activity is responsible for obtaining affirmative consent for that activity. Lack of protest does not constitute affirmative consent. Lack of resistance does not constitute affirmative consent. Silence and/or passivity also do not constitute affirmative consent. Relying solely on non-verbal communication before or during sexual activity can lead to misunderstanding and may result in a violation of this policy.

It is important not to make assumptions about whether a potential partner is consenting. In order to avoid confusion or ambiguity, participants are encouraged to talk with one another before engaging in sexual activity. If confusion or ambiguity (including emotional and/or physical freezing) arises

during sexual activity, participants are encouraged to stop and clarify a mutual willingness to continue that activity.

5.1.1. FORCE

Affirmative consent cannot be obtained by force. Force includes the use of physical violence, threats, intimidation, and/or coercion.

Physical violence means that a person is exerting control over another person through the use of physical force. Examples of physical violence include but are not limited to hitting, punching, slapping, kicking, restraining, choking, and brandishing or using any weapon.

Threats are words or actions that would compel a reasonable person to engage in unwanted sexual activity. Examples include threats to harm a person physically, to reveal private information to harm a person's reputation, or to cause a person academic or economic harm.

Intimidation is an implied threat that menaces or causes reasonable fear in another person. A person's size alone does not constitute intimidation; however, a person's size may be used in a way that constitutes intimidation (e.g., blocking access to an exit).

Coercion is the use of pressure to compel another individual to initiate or continue sexual activity against that individual's will. Coercion can include a wide range of behaviors, including intimidation, manipulation, threats, and blackmail. A person's words or conduct are sufficient to constitute coercion if they wrongfully impair another individual's freedom of will and ability to choose whether or not to engage in sexual activity. Examples of coercion include, but are not limited to:

- a. threatening to "out" someone based on sexual orientation, gender identity, or gender expression
- b. threatening to harm oneself if the other party does not engage in the sexual activity
- c. grooming an individual for the purposes of relationship violence and/or sexual misconduct.

In evaluating whether coercion was used, the university will consider the frequency of the application of the pressure, the intensity of the pressure, the degree of isolation of the person being pressured, the duration of the pressure, and the power differential between parties.

5.1.2. INCAPACITATION

Affirmative consent cannot be gained by taking advantage of the incapacitation of another, where the person initiating sexual activity knew or reasonably should have known that the other was incapacitated.

Incapacitation describes an individual who lacks the ability to make informed, rational judgments about whether or not to engage in sexual activity and therefore cannot consent to sexual activity. A person who is incapacitated is unable, temporarily or permanently, to give affirmative consent because of mental or physical helplessness, sleep, unconsciousness, or lack of awareness that sexual activity is taking place. A person may be incapacitated as a result of the consumption of alcohol or other drugs, or due to a temporary or permanent physical or mental health condition.

5.1.2.1. Incapacitation and the Use of Drugs or Alcohol

Incapacitation may result from the use of alcohol and/or drugs. Incapacitation is a state beyond drunkenness or intoxication. Warning signs that a person may be approaching incapacitation may include:

- a. slurred speech
- b. vomiting
- c. unsteady gait
- d. odor of alcohol
- e. combativeness
- f. emotional volatility

Incapacitation as a result of the consumption of alcohol and/or drugs impairs decision-making abilities, diminishes awareness of consequences, compromises one's ability to make informed judgments, and limits one's capacity to understand the implications and consequences of an act. It is not possible for a party to obtain affirmative consent from someone who is incapacitated. It is not possible for someone who is incapacitated to give affirmative consent. If there is any doubt as to the level or extent of an individual's intoxication or impairment, sexual contact or activity should not be initiated or should be immediately stopped.

In evaluating affirmative consent and in cases of alleged incapacitation, the university asks two questions: (1) did the person initiating sexual activity know that the other party was incapacitated? and if not, (2) should a sober, reasonable person in the same situation have known that the other party was incapacitated? If the answer to either of these questions is "yes," affirmative consent was absent, and the conduct a violation of this policy.

5.1.3. OBTAINING AFFIRMATIVE CONSENT

Affirmative consent to one form of sexual activity does not, by itself, constitute affirmative consent to another form of sexual activity. For example, one should not presume that affirmative consent to oral-genital contact constitutes affirmative consent to vaginal or anal penetration. Affirmative consent to sexual activity on a prior occasion does not, by itself, constitute affirmative consent to future sexual activity. In cases of prior relationships, the manner and nature of

prior communications between the parties and the context of the relationship may have a bearing on the presence of affirmative consent.

Affirmative consent may be withdrawn at any time. An individual who seeks to withdraw affirmative consent must communicate, through clear words or actions, a decision to cease the sexual activity. Once affirmative consent is withdrawn, the sexual activity must cease immediately.

SECTION 6: CONSENSUAL RELATIONSHIPS

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6.1. EMPLOYEE-TO-EMPLOYEE

It is the policy of the University to discourage romantic relationships between employees; however, when they occur, they are to be disclosed in the following manner.

If an employee is engaged in a romantic or sexual relationship with another employee whom they supervise, evaluate, or advise, it is their professional responsibility to inform the Director of Human Resources immediately to discuss and assess the situation with the parties to determine whether it is appropriate to make changes to the advisory, evaluative, or supervisory relationship. Information disclosed in these discussions shall be treated as confidential, and disclosure to others shall be made only on a need-to-know basis.

In the event an employee is found to have engaged in a romantic or sexual relationship with someone whom they supervised, evaluated, or advised, and the Director of Human Resources was not advised of the existence of the relationship, disciplinary action will be taken, up to and including termination.

6.2. EMPLOYEE-TO-STUDENT

It is the policy of the University to discourage romantic relationships between employees and students. Romantic or sexual relationships between employees and students can be characterized by significant power differentials and are subject to significant liabilities. If they occur, they are to be disclosed in the following manner.

If an employee is interested in or is engaging in a romantic or sexual relationship with a student whom they instruct, supervise, evaluate, or advise, it is their professional responsibility to inform the Director of Human Resources immediately to discuss and assess the situation. The Director of Human Resources will report the relationship to the Title IX Coordinator. A review will be conducted of possible conflict of interest. The Title IX Coordinator and the Director of Human Resources will make the determination whether there is a substantive power differential or conflict of interest within the relationship. Should such a determination be made, one of the individuals may be required to leave EMU. Information disclosed in these discussions shall be treated as confidential and disclosure to others shall be made only on a need-to-know basis.

SECTION 7: REPORTING

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All employees of EMU, with the exception of Confidential Employees, are required to report incidents of sexual harassment, relationship violence, sexual misconduct, and other conduct prohibited by this policy (“Prohibited Conduct”) in order to obtain assistance for impacted parties and maintain a safe campus environment. Students are also encouraged to report.

The University will take action to respond to allegations of Prohibited Conduct when the University has notice that Prohibited Conduct may have occurred. The Title IX Coordinator is charged with responding to allegations of Prohibited Misconduct to stop the behavior, prevent its recurrence, and remedy its effects. Specifically, the Title IX Coordinator or Deputy Title IX Coordinator will coordinate the initial inquiry, offer resources and support, and initiate an investigation when appropriate and/or requested.

The University will respond to every report it receives to the best of its ability. Anonymous or third-party reports may limit the response the University can provide. In addition, an individual does not have to be a member of the EMU community to file a report under this policy. The University encourages all individuals to seek immediate assistance from campus security, law enforcement, a medical provider, and/or an advisor of their choice. Though the University encourages immediate reporting, delayed reporting will not be considered as a factor when assessing the preponderance of the evidence in a future University process.

7.1. EMPLOYEE REPORTING OBLIGATIONS

With the exception of Confidential Employees (see [Section 2: Definitions](#)(see page 6), [Confidential Employee](#)(see page 7)), all University Campus Security Authorities, employees, including faculty, staff, administrators, and contracted third parties are required to share with the Title IX Coordinator any report of Prohibited Conduct about which they become aware.

As outlined in the Privacy and Confidentiality section ([Section 3.4](#)(see page 16)) of this policy, the University respects the privacy interests of students and employees. Information reported to the Title IX Coordinator will only be shared with the University officials who will assist in responding, investigating, and/or resolving a report. The University will document non-identifying information in the campus incident log as required by the [Clery Act](#)⁴⁵. Should the University determine there is a serious or imminent threat, a timely warning notice will be shared with the EMU community.

The Title IX Coordinator will ensure that the University responds to all reports in a timely, fair, effective, and consistent manner. To accomplish this, the Title IX Coordinator may consult with members of the Title IX Assessment Team and others, as applicable.

⁴⁵ <https://clerycenter.org/policy-resources/the-clery-act/>

The University will approach each report with the intent to understand the perspective and experiences of each individual involved to ensure fair and impartial evaluation and resolution. The University will also take every effort to ensure the safety of the campus community when evaluating and assessing Prohibited Conduct.

7.2. CAMPUS SAFETY INCIDENT REPORTS

A report is a notification of Prohibited Conduct to the Title IX Coordinator by any person. Reports should be filed on EMU's [Safety and Care Reporting Form](#)⁴⁶, or by completing the [EMU RVSM Complaint Form](#)⁴⁷. Alternatively, a report may be made by contacting the Title IX Coordinator directly, 540-432-4849/titleixcoordinator@emu.edu.⁴⁸ Reports may be specified as a request for resources or information, a request for no further action, or a request to initiate an investigation.

The University will work cooperatively and equitably to ensure that the Complainant's and Respondent's health, physical safety, work, and academic status are protected, by offering Supportive Measures at any time during the process.

The procedures set forth below afford a prompt and equitable response to reports of Prohibited Conduct, as well as maintain privacy and fairness consistent with applicable legal requirements and EMU's guiding principles, values, and mission (See also our [Life Together Commitment](#)⁴⁹), and hold responsible those who violate this policy, thereby harming others..

The University will complete an adequate, reliable, equitable, and impartial investigation of reports that are made in good faith and will uphold the rights of all parties. In instances of conflicts of interest between the Title IX or Deputy Title IX Coordinators, investigators, Complainant, and/or Respondent, an outside third party investigator will be contracted to conduct the investigation.

Anonymous reports are also accepted and should be directed to the Title IX Coordinator. The University will respond promptly and equitably to anonymous reports, but the response may be limited if the report does not include identifying information and/or a description of the facts and circumstances. Anonymous reports that provide enough information to constitute certain criminal offenses will be reported to Campus Safety and Security for purposes of inclusion in the University's annual security report and to assess whether the University should send a timely warning notice as required by the [Clery Act](#)⁵⁰.

46 https://cm.maxient.com/reportingform.php?EasternMennoniteUniv&layout_id=2

47 https://cm.maxient.com/reportingform.php?EasternMennoniteUniv&layout_id=8

48 <mailto:titleixcoordinator@emu.edu>

49 <https://emu.edu/about/life-together>

50 <https://clerycenter.org/policy-resources/the-clery-act/>

7.2.1. CAMPUS REPORTING OPTIONS

Campus reporting options include:

1. Title IX Coordinator: Rachel Roth Sawatzky, 540-432-4849, titleixcoordinator@emu.edu⁵¹
2. Campus Safety Incident Form: <https://emu.edu/safecampus/>
3. Campus Security (Harrisonburg campus): 540-432-4911
4. Title IX Deputies:
 1. EMU Harrisonburg campus: Marybeth Showalter, Director of Human Resources, 540-432-4148, hr@emu.edu⁵²
 2. EMU athletics: Katie Russo, Women’s Lacrosse Coach, 540-432-4368, katie.russo@emu.edu⁵³
 3. EMU undergraduate programs: Todd VanPatter, Asst Dir, Survey Research, Institutional Research, 540- 432-4398, todd.vanpatter@emu.edu⁵⁴
 4. EMU graduate programs: Emily North, Administrative Assistant, School of Theology, Humanities and Performing Arts, 540-432-4261, emily.north@emu.edu⁵⁵
 5. EMU Lancaster campus: Mary Jensen, Associate Provost, 717-690-8600, assocprovost.lancaster@emu.edu⁵⁶
 6. EMU WCSC site: Jamie Reich, WCSC’s Program Administrator, (202) 529-5378, jamie.reich@emu.edu⁵⁷

All faculty and staff members, who are considered Mandated Reporters

7.3. REPORTING TO LAW ENFORCEMENT

In addition to a University response, EMU supports the Complainant’s option to make a police report and pursue criminal action for incidents of Prohibited Conduct that may also be crimes under local criminal statutes. EMU also respects the Complainant’s right to decline to file criminal charges.

A Complainant may simultaneously pursue criminal action and the University processes under this policy. The University will support Complainants in understanding and assessing their reporting options and assist in notifying law enforcement authorities if a Complainant so chooses. Upon receipt of a report, the University will provide written notification to individuals of their right to file (or decline to file) criminal charges as well as the availability of medical, counseling, and support services (see [Appendix⁵⁸B](#)(see page 63)). Making a report to the University does not require participation in any subsequent University

51 <mailto:titleixcoordinator@emu.edu>

52 <mailto:hr@emu.edu>

53 <mailto:katie.russo@emu.edu>

54 <mailto:todd.vanpatter@emu.edu>

55 <mailto:emily.north@emu.edu>

56 <mailto:assocprovost.lancaster@emu.edu>

57 <mailto:jamie.reich@emu.edu>

58 <https://resources.emu.edu/confluence/display/RVSM/Appendix+C%3A++Rights+of+the+Reporting+Party>

proceedings, nor is a report required for a Complainant to receive Supportive Measures.

Note that definitions of local criminal law may differ from those used in this policy, which adheres to [Clery Act definitions](#)⁵⁹ and definitions required by the US Department of Education. The University also adjudicates cases under this policy according to the standard of proof known as Preponderance of the Evidence (see Section 2 for definitions); while criminal processes use the Beyond a Reasonable Doubt standard of proof. These differing standards of proof may result in different outcomes for the same case when adjudicated under this policy and under local criminal laws.

Complainants may call 911 immediately in the event of an assault or in any other emergency. Complainants may also choose to file (or not to file) criminal charges at that time.

7.4 PRESERVATION OF EVIDENCE

Preserving evidence to support the claims filed in a report and responding to a report is particularly helpful in order to assist in achieving the preponderance of evidence. In matters involving alleged sexual assault, if possible, the Complainant(s) should refrain from bathing, showering, using the restroom, changing clothes, combing hair, or cleaning up the area before reporting the assault in order to preserve evidence.

In instances of sexual assault, domestic violence, dating violence, intimate partner violence, or any other instances of sexual or physical abuse, the Complainant(s) may opt to have a Physical Evidence Recovery Kit ([PERK kit](#))⁶⁰ collected. A PERK kit can be collected by a Sexual Assault Nurse Examiner (SANE nurse) [at a local hospital for free](#).⁶¹ The cost of a PERK exam and any related medication is paid for by the Commonwealth of Virginia. In Pennsylvania, [Lancaster General Hospital](#)⁶² Emergency Department can facilitate emergency care. In the District of Columbia, [MedStar Washington Hospital Center](#)⁶³ can be accessed.

A Complainant may choose not to notify law enforcement or file a police report but may still have a PERK kit collected. PERK kits from Complainants who elect not to file a report with law enforcement are known as Anonymous Physical Evidence Recovery Kits and will be stored for two years, although the holding facility, the Complainant, or the law enforcement agency may elect for the kit to be retained for a longer period.

59 <https://www2.ed.gov/admins/lead/safety/handbook.pdf>

60 <https://www.rainn.org/articles/rape-kit>

61 <https://goo.gl/maps/GEos1EkXbGK2>

62 https://www.lancastergeneralhealth.org/?gclid=EAlaIQobChMlyYqM8vaH4wIVGYezCh06NQZuEAAYASAAEgJuQPD_BwE

63 <https://www.medstarwashington.org/>

7.5. REPORTING CONSIDERATIONS

7.5.1. TIMELINESS OF REPORT, LOCATION OF INCIDENT

The University encourages prompt reporting of Prohibited Conduct so that the University can respond promptly and equitably. However, the University does not limit the timeframe for reporting. Delayed reporting will not be considered as a factor when assessing the preponderance of the evidence. If the Complainant is not affiliated with the University or is no longer affiliated with the University at the time the report is made, the University will provide reasonably appropriate Supportive Measures, assist the Complainant in identifying external reporting options, and take other reasonable steps to respond.

7.5.2. PERSONAL USE OF ALCOHOL AND/OR DRUGS

The University seeks to remove any barriers to reporting and will offer a student, Complainant(s), third party, and/or witness who reports Prohibited Conduct amnesty for violations related to the University's alcohol or other drugs policy. The University may choose, however, to recommend educational or therapeutic remedies in certain situations.

This policy does not grant immunity for criminal, civil, or legal consequences for violations of federal, state, and/or local laws.

7.5.3. STATEMENT AGAINST RETALIATION

As stated in Section 4.5, retaliation is a violation of this policy and can take many forms, may be committed by or against an individual or group, and may be committed toward the Complainant by the Respondent and vice versa. An individual reporting Prohibited Conduct is entitled to protection from any form of retaliation following a report made in good faith, even if the report is not later substantiated.

7.5.4. FALSE REPORTING

The allegation of Prohibited Conduct may have severe consequences and therefore the University takes very seriously the validity of reported information. An individual who makes a report that is later found to have been intentionally false or made maliciously without regard for the truth may be subject to disciplinary action. This provision does not apply to reports made in good faith, even if the facts alleged in the report are not substantiated by an investigation. Similarly, a party or witness who is later proven to have intentionally given false information during the course of an investigation or resolution may be subject to disciplinary action.

7.6. REPORTS INVOLVING MINORS

Complainants under the age of 18 that file a report with police may be deemed a child in need of services and the appropriate authorities will decide whether to pursue charges. If a parent or guardian of a minor refuses to consent to a physical evidence recovery kit (PERK) examination of the minor, the minor may consent on their own behalf. Any person, even those listed as Confidential Employees, is required by law to report the abuse and neglect against anyone under the age of 18.

7.7. TIMEFRAME FOR PROCEDURES

The University seeks to resolve all complaints of Prohibited Conduct within sixty (60) days. All time frames expressed in this policy are meant to be guidelines rather than rigid requirements. Circumstances may arise that require the shortening or lengthening of time frames, including extension beyond sixty (60) days. In general, a Complainant and Respondent can expect that the process will proceed according to the time frames provided in this policy. In the event that the investigation and resolution exceed this time frame, the Title IX Coordinator will notify all parties of the reason for the delay and the expected adjustment in time frames. Best efforts will be made to complete the process in a timely manner by balancing principles of thoroughness and fundamental fairness with promptness.

7.8. RESOLUTION PROCEDURES

The specific procedures for reporting, investigating, and resolving Prohibited Conduct are based upon the nature of the Respondent's relationship to the University (student, employee, or third party). Each set of procedures referenced below is guided by the same principles of fairness and respect for Complainant and Respondent, consistent with the University's Life Together Commitment, history, mission, and values.

A student or employee determined by the University to have committed an act of Prohibited Conduct is subject to disciplinary action, up to and including separation from the University. Third parties who commit Prohibited Conduct may have their relationships with the University terminated and/or their privileges of being on University premises withdrawn.

Each set of procedures provide for prompt and equitable response to reports of Prohibited Conduct. The procedures designate specific timeframes for major stages of the process. They also provide for thorough and impartial investigations that afford all parties notice and an opportunity to present witnesses and evidence and to view the information that will be used in determining whether a policy violation has occurred.

Please see [Appendix A](#)(see page 49) for resolution procedures.

SECTION 8: RESOURCES AND SUPPORTIVE MEASURES

Information on this page

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8.1. RESOURCES

Resources are available to all EMU students and employees, whether they have filed a Formal Complaint using the [EMU RVSM Complaint Form](#)⁶⁴, made a report to the Title IX Coordinator or a Mandated Reporter, or have otherwise sought support directly through various Confidential Employees on campus.

8.1.1. EMU COUNSELING SERVICES

EMU Counseling Services are available for direct service free of charge to all EMU students at the main campus. Off campus or online program faculty, staff, or students are able to consult with an EMU counselor via email or phone to locate resources or assistance in their own geographic area.

In collaboration with EMU's Health Services, a licensed psychiatrist is available once a month on campus for additional mental health services.

EMU Counseling Services is able to provide recommendations for off-campus counseling, therapy, and mental health services for EMU staff and for EMU students who do not wish to use on-campus counseling services. Please contact EMU Counseling Services at 540-432-4317 or counselingservices@emu.edu⁶⁵ for information.

8.1.2. HEALTH SERVICES

8.1.2.1. EMU Health Services

EMU's Health Services is available to all current students, faculty and staff.

EMU's Health Services can provide referrals to local health specialists in the Harrisonburg area, including: Orthopedics, GI, dermatologists, etc.

To contact EMU's Health Services please call (540) 432-4308, email healthservices@emu.edu⁶⁶, or stop by their office in the University Commons, Room 240 (upstairs) through the Student Life Suite.

8.1.2.2. Sentara RMH Medical Center

Harrisonburg's main hospital, Sentara RMH Medical Center, is located at 2010 Health Campus Dr. Harrisonburg, VA 22801. In an emergency, please dial 911. To contact the hospital in a non-emergency situation, call 540-699-1000. The

⁶⁴ https://cm.maxient.com/reportingform.php?EasternMennoniteUniv&layout_id=8

⁶⁵ <mailto:counselingservices@emu.edu>

⁶⁶ <mailto:healthservices@emu.edu>

Sentara RMH emergency room is open 24 hours a day, 7 days a week. PERK kits (see Section 2 and Section 7.4) are collected in the Sentara RMH Medical Center.

8.1.3. SEXUAL ASSAULT, DOMESTIC VIOLENCE, & CRISIS SERVICES

8.1.3.1. Collins Center

The [Collins Center](https://www.thecollinscenter.org/)⁶⁷ provides sexual assault and crisis services to the Harrisonburg community. Located at 217 S. Liberty St. Harrisonburg, the Collins Center provides a trained sexual assault crisis advocate who offers support and information at the hospital and assistance when reporting a sexual assault to the police (if reporting to the police is desired).

The Collins Center also provides short-term crisis support sessions, support groups, court advocacy and accompaniment, child advocacy, professional therapists with trauma-specific training, and information and referrals for other support services.

In a non-emergency situation, contact the Collins Center at 540-432-6430. In a crisis situation, contact the Collins Center's 24-hour sexual assault crisis hotline at 540-434-2272. The crisis hotline is staffed 24/7 by a trained Collins Center employee.

8.1.3.2. First Step

[First Step](https://www.firststepva.com/)⁶⁸ provides domestic and dating violence survivor services to the Harrisonburg community, including a 24/7 crisis hotline, safety planning, emergency shelter, support groups, court accompaniment, legal advocacy, financial empowerment, children's support and advocacy, and referrals.

Contact First Step at any time at 540-434-0295. If you are in immediate danger, dial 911 and local law enforcement can assist you in accessing First Step services after addressing your immediate safety needs.

8.1.4. SECURITY AND LAW ENFORCEMENT SERVICES

8.1.4.1. EMU Office of Campus Safety & Security

EMU provides 24-hour security services to the Harrisonburg campus. From 8am-4pm Monday-Friday, EMU Coordinator of Campus Safety and Security, Dave Emswiler, or his designee, responds to safety and security incidents. EMU contracts with [Admiral Security](http://www.admiralsecurity.com/)⁶⁹ to provide non-sworn security officers from 4pm-8am on weekdays and 24 hours a day on Saturdays and Sundays.

⁶⁷ <https://www.thecollinscenter.org/>

⁶⁸ <https://www.firststepva.com/>

⁶⁹ <http://www.admiralsecurity.com/>

In an emergency situation, please dial 911. In a non-emergency situation, EMU safety personnel can be reached 24/7 at 540-432-4911.

8.1.4.2. Harrisonburg Police Department

The Harrisonburg Police Department has jurisdiction for the investigation and enforcement of all state and local criminal laws on EMU’s Harrisonburg campus. The Harrisonburg Police Department can investigate any reported sexual assault or other forcible sexual offense on EMU’s Harrisonburg campus, in or on a non-campus building or property of EMU Harrisonburg, or on public property near EMU Harrisonburg.

Those who experience an incident of sexual violence can choose to:

1. Allow the local police department to investigate the allegation of sexual assault or other violation of this policy;
2. Press civil or criminal charges if an instance of unlawful activity has occurred;
3. Provide details of the incident even in cases where the act being reported is not unlawful under federal or state law;
4. Decline to have the local police department investigate the incident; or
5. Determine at a later date to press charges, if permission for an investigation was granted at the time of the incident.

In an emergency situation, please dial 911. In a non-emergency situation, contact:

1. Harrisonburg campus: Violent Crimes Against Women Detective Aaron Dove, major crimes unit, 540-437-2646, or the Harrisonburg Police Department switchboard at 540-434-4436.
2. Lancaster campus: East Lampeter Township Police Department, 717-291-4676
3. Washington DC campus: DC Metro Police, 202-727-9099

8.2. SUPPORTIVE MEASURES

EMU offers the following Supportive Measures, and others as appropriate, to all student and employee Complainants, regardless of whether a Formal Complaint has been filed. In the event that a Formal Complaint is filed, EMU will also offer the following Supportive Measures, and others as appropriate, to the Respondent.

EMU will take every measure to protect the privacy of those seeking Supportive Measures. Personal information will only be shared with those essential to making decisions about and enacting Supportive Measures. Those who are requesting Supportive Measures will always be notified before personally identifying information is shared for the purpose of arranging requested Supportive Measures.

8.2.1. ACADEMIC ACCOMMODATIONS

As part of resolution processes, the Title IX Coordinator will work with (a) representative(s) of the EMU CARE Team and/or individual faculty members to change or make academic accommodations to the Complainant's or Respondent's course schedule if the request is made in writing and if the accommodation requests are reasonably available.

Student and staff requests for academic accommodations can be sent to the Title IX Coordinator, titleixcoordinator@emu.edu⁷⁰.

8.2.2. LIVING ACCOMMODATIONS

As part of resolution processes, the Title IX Coordinator will work with residence life staff to change or make accommodations to the Complainant's or Respondent's living arrangements if the request is made in writing and if the accommodation requests are reasonably available. Requests for living accommodations can be sent to the Title IX Coordinator, titleixcoordinator@emu.edu⁷¹.

8.2.3. TRANSPORTATION ACCOMMODATIONS

As part of resolution processes, the Title IX Coordinator will work with appropriate authorities to change or make accommodations to the transportation arrangements for the Complainant or Respondent if the request is made in writing and if the accommodation requests are reasonably available.

Student and staff requests for transportation accommodations can be sent to the Title IX Coordinator, titleixcoordinator@emu.edu⁷².

8.2.4. WORKING ACCOMMODATIONS

As part of resolution processes, the Title IX Coordinator will work with the Complainant's or Respondent's supervisor to change or make accommodations to the Complainant's or Respondent's work arrangement if the request is made in writing and if the accommodation requests are reasonably available.

Student and staff requests for working accommodations can be sent to the Title IX Coordinator, titleixcoordinator@emu.edu⁷³.

70 <mailto:titleixcoordinator@emu.edu>

71 <mailto:titleixcoordinator@emu.edu>

72 <mailto:titleixcoordinator@emu.edu>

73 <mailto:titleixcoordinator@emu.edu>

8.2.5. PROTECTIVE ORDERS

8.2.5.1. EMU No Contact Orders

Complainants and Respondents each have the right to request a no contact order that restricts contact between the Complainant and the Respondent on EMU's campus. Students and staff should initiate the request for a no contact order with the Title IX Coordinator, titleixcoordinator@emu.edu⁷⁴.

The Title IX Coordinator will work with the Coordinator of Campus Safety and Security to issue a no contact order from EMU's Office of Campus Safety and Security. No contact orders will be enforced by campus safety officials.

8.2.5.2. Court Order of Protection

Protective orders may be requested from a local judge or magistrate at the [Harrisonburg Court House](#)⁷⁵. (53 Court Square, Harrisonburg). The following protective orders are available:

1. Emergency protective order: Emergency protective orders can be put in place for up to 72 hours
2. Preliminary protective order: Preliminary protective orders are put in place for 15 days
3. Full protective order: Full protective orders extend up to two years

In Virginia, persons who wish to have a court-ordered protective order put in place must go before either the local magistrate or a local judge and make a case that they are fearful of harm, violence, or the threat of violence. More information is available from the [Virginia Court System](#)⁷⁶. In Pennsylvania, persons who wish to have a court-ordered protective order put in place should go to the local courthouse. In Washington DC, persons who wish to have a court-ordered protective order put in place should visit a domestic violence intake center.

8.3. WRITTEN NOTIFICATION OF AVAILABLE RESOURCES

Written notification about existing counseling, health, mental health, victim advocacy, legal assistance, and other services that may be available, both within the institution and in the community, are available from the Title IX Coordinator. Written notification of these resources will be provided to all Complainants in response to a report received by the Title IX Coordinator and to all Respondents upon receipt of a Formal Complaint.

⁷⁴ <mailto:titleixcoordinator@emu.edu>

⁷⁵ <http://www.courts.state.va.us/courts/gd/harrisonburg~rockingham/home.html>

⁷⁶ <http://www.courts.state.va.us/courts/home.html>

Written notification about available options for, assistance in, and how to request changes to academic, living, transportation, on campus employment situations, and/or protective measures is available to anyone who experiences an incident of Prohibited Conduct whether or not the incident is reported. Written notification of these accommodations will be provided to all Complainants upon receipt of a report by the Title IX Coordinator and to all Respondents upon receipt of a Formal Complaint.

Appendix A: Procedures

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SECTION A.1: INTRODUCTION⁷⁷

The care and welfare of EMU students, faculty, and staff is of utmost importance. While policies and procedures can often feel cold and impersonal, we understand the stress and emotional trauma involved in such situations. Procedures are carried out by people who care about and are committed to trauma informed work with all parties involved.

The following procedures function in conjunction with the [Relationship Violence and Sexual Misconduct Policy](#)(see page 2), and will be initiated when a report of an alleged occurrence of Prohibited Conduct is received. The intent of these procedures is to provide a prompt, fair, equitable, and impartial process from the initial report to the final outcome, consistent with applicable law and our commitment to the Anabaptist-Mennonite Christian tradition, as expressed in the University’s Life Together Commitment, mission, and values. This process is not designed to take the place of making a criminal report to law enforcement or of a criminal investigation. The procedure as outlined below may take place whether or not a criminal report is made: it is a separate and independent process.

EMU is committed to a “prompt and equitable resolution” of complaints of Prohibited Conduct whether education is being conducted in person or remotely through online platforms. When these procedures must be applied during times of remote instruction, they will be followed as closely as possible in the investigative and adjudicative processes.

SECTION A.2: GRIEVANCE PROCESS

The procedures that follow articulate the Grievance Process used by the University to address Formal Complaints under this policy. Upon the receipt of a Formal Complaint, the presumption followed by the University is that the Respondent will not be held responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of this process. The standard used to determine responsibility for all Formal Complaints against students and staff under this policy is the preponderance of the evidence.

This process is intended to provide the parties a reasonably prompt time frame for the conclusion of this process, as provided in [Section 7.7](#)(see page 42) of this policy and as is otherwise provided in each section below. These timelines may be temporarily delayed or extended for good cause, which is defined to include considerations such as the absence of a party; concurrent law enforcement activity; the need for language assistance or accommodation of disabilities; difficulties obtaining or securing evidence; and other good and just cause. The

⁷⁷ <https://docs.google.com/document/d/1INy9SE434GPOLwuyokMssuFv4QksYv7T2b1phZvCnoo/edit?ts=5b7472ea#heading=h.lxuj99x88up2>

University will notify both parties simultaneously if an extension is needed and the reasons for the extension.

At no time should this process be construed as requiring, allowing, relying upon, or otherwise using questions or evidence that constitute or seek disclosure of information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

This process may conclude and the Formal Complaint may be dismissed at any time if (1) the Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein; (2) the Respondent is no longer enrolled in or employed by the University; or (3) specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint or the allegations. Upon a dismissal permitted under this policy, the University will promptly notify both parties simultaneously of the dismissal and the reason(s) supporting the dismissal.

SECTION A.3: REPORTING

A.3.1. MAKING A REPORT

Reports can be made by submitting a completed [Campus Safety and Care Reporting Form](#)⁷⁸; by contacting the Title IX Coordinator in person, via phone at 540-432-4849, or by email at titleixcoordinator@emu.edu⁷⁹; or by making a disclosure to a faculty or staff person, who serve as Mandated Reporters.

A.3.2. UNIVERSITY RESPONSE TO COMPLAINANT

After receiving a report, the Title IX Coordinator will contact the Complainant to assess safety and offer an opportunity for an intake meeting.

During the intake meeting, the Title IX Coordinator will make available and review copies of the [Appendix B: Rights of the Complainant](#)(see page 63), outline the RVSM process and procedures, and provide a list of [Section 8: \(see page 43\)Resources and Supportive Measures](#).

The Complainant will be offered the following options for moving forward:

1. No Further Action: the Complainant can indicate a preference that the Title IX Coordinator and/or the Deputy Title IX Coordinator take no further action to pursue an investigation into the reported incident;
2. File a Formal Complaint: the Complainant can indicate a preference that the Title IX Coordinator proceeds with an investigation of the reported incident;
3. Assist in making a Police Report. This option can be pursued regardless of whether or not option A or B has been selected. The Complainant may

⁷⁸ https://cm.maxient.com/reportingform.php?EasternMennoniteUniv&layout_id=2

⁷⁹ <mailto:titleixcoordinator@emu.edu>

also choose to make a separate report to the local police department at a later time if they decide not to file a police report immediately.

The Complainant may choose which of the above options they want the University to take, and will indicate their choice by completing the [EMU RVSM Complaint Form](#)⁸⁰, if they have not done so as part of their initial outreach to the University Title IX office. Once this form has been completed, Complainants may change their mind at any time as to the course of action they want the process to take and will indicate this decision by completing this form again. Regardless of the option selected, the Complainant may access certain campus resources and Supportive Measures, for example, counseling, health center support, and pastoral services. For a full listing see [Section 8: \(see page 43\)Resources and Supportive Measures](#).

A.3.3. INITIAL ASSESSMENTS AND NOTICE TO PARTIES

A.3.3.1 Safety Assessment

All [Campus Safety and Care Reporting Form](#)⁸¹s and [EMU RVSM Complaint Form](#)⁸²s are received by the [Title IX Coordinator](#)⁸³, the [Coordinator of Campus Safety and Security](#)⁸⁴, and the Dean of Students, who comprise the Title IX Safety Team. After a report is received, the Safety Team will determine the need for administrative leave (in the case of employees), emergency removal (in the case of students), and/or a timely warning to be issued within the 72 hour notice to the Commonwealth’s Attorney and local law enforcement, and will, if deemed necessary make those notifications. A timely warning is required by the [Clery Act](#)⁸⁵ and alerts the campus community to potentially dangerous circumstances. The need for a timely warning is determined by considering the nature of the act reported and the likelihood that continuing danger exists for the campus community. If warranted, a timely warning will be issued by the Coordinator of Campus Safety and Security, who has the final authority to make the determination. In cases involving an employee, the Director of Human Resources will also be consulted.

A.3.3.2 Title IX Assessment

No Further Inquiry or Investigation. The Title IX Assessment team will assess the Complainant’s preference for no further action by considering the severity of the alleged misconduct and the factors set forth in [Section 3.6\(see page 19\): Request for Anonymity](#). If the Complainant chooses not to move forward, the Title IX Assessment team may concur that no further process is required. The Title IX Assessment Team may also determine that the Title IX Coordinator must execute

80 https://cm.maxient.com/reportingform.php?EasternMennoniteUniv&layout_id=8

81 https://cm.maxient.com/reportingform.php?EasternMennoniteUniv&layout_id=2

82 https://cm.maxient.com/reportingform.php?EasternMennoniteUniv&layout_id=8

83 <https://emu.edu/faculty-staff/?show=rothrb>

84 <https://emu.edu/faculty-staff/?show=emswildw>

85 <https://clerycenter.org/policy-resources/the-clery-act/>

a Formal Complaint to move forward based upon the severity of the alleged misconduct and/or other factors set forth in Section 3.6 despite the wishes of the Complainant.

Formal Complaint. The Title IX Assessment team will assess the Formal Complaint to determine whether the Complainant's allegations are within the scope of this policy or whether another University policy controls. If it is determined that the Formal Complainant is not within the scope of this policy, the Title IX Coordinator will notify the Complainant that the Formal Complaint is dismissed and will refer the Complainant to the appropriate process.

A.3.3.3.Consolidation

The University may consolidate Formal Complaints as to allegations against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, when the allegations arise out of the same facts or circumstances.

A.3.3.4. Notice of Allegations and Investigation

Upon receipt of a Formal Complaint, the University will provide the following written notice to the Complainant and the Respondent which includes the following:

- A copy of this Appendix A;
- Notice of the allegations listed in the Formal Complaint, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview;
- Sufficient details include:
 - The identities of the parties involved in the incident, if known;
 - The conduct allegedly constituting Prohibited Conduct, if known;
 - The date and location of the alleged incident, if known;

A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of this process;

Notice to the parties that they may have an Advisor of their choice, who may be, but is not required to be, an attorney;

- The parties will be provided a relevant consent form to share information consistent with this procedure

Notice to the parties that they may inspect and review evidence as provided below;

Notice to the parties of any provision in the University's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process; and

Reminders to the parties that retaliation is prohibited.

If, during the course of the investigation, the University decides to investigate allegations about the Complainant or the Respondent that are not included in

this notice, the University will provide notice of the additional allegations to the parties.

A.3.4. UNIVERSITY OUTREACH TO RESPONDENT

Once a Formal Complaint is filed, the Title IX Coordinator will make contact with the Respondent by phone call or email to set up a time for an intake meeting.

The Respondent may have an Advisor with them at this meeting. The Respondent also has the right to decline a meeting. During the intake meeting, the Title IX Coordinator will make available and review copies of the [Appendix C: \(see page 65\)Appendix C: \(see page 65\)Rights of the Respondent](#)⁸⁶, outline the Title IX process and procedures, and provide a list of [Section 8: \(see page 43\)Resources and Supportive Measures](#), both on and off campus.

SECTION A.4: INVESTIGATION

A.4.1. INVESTIGATION

The Title IX Coordinator or their designee will conduct a prompt, thorough, impartial, and equitable investigation based on the following principles:

- The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on EMU and not on the parties;
- The University will not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the University obtains that party's voluntary, written consent to do so in this process;
- Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other evidence in support of their position; and
- Provide written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate. The availability of a party's Advisor is irrelevant to this principle.

A.4.2. INTERVIEWS WITH INVOLVED PARTIES

As a part of the investigation, interviews will be conducted with all involved parties, beginning with the Complainant. The Complainant and the Respondent will not come into contact with one another during the interview process. The

⁸⁶ <https://resources.emu.edu/confluence/display/RVSM/Appendix+D%3A++Rights+of+the+Responding+Party>

University will provide each party with at least 24 hours' notice of the date, time, location, participants, and purpose of each interview.

The involved parties may have an Advisor of their choosing present during all stages of the reporting, investigating, and adjudication process in a non-participatory role (See [Section 2: Definitions](#)(see page 6)). The interviewer may also choose to have a confidential unbiased third party included in the interview. Interviews with any witnesses will also be conducted. No unauthorized audio or video recordings of any kind are permitted during any stage of this process, including, without limitation, during the interviews.

A.4.3. WITNESS INTERVIEWS

If it is necessary to interview witnesses as a part of the investigation process, witnesses can expect preservation of their privacy, except as otherwise provided in this policy; to be treated with respect by University officials; appropriate accommodations and protective measures, including the right to bring a support person; and other forms of assistance (for a list of available Supportive Measures, see Section 8.2).

A.4.4. DRAFT INVESTIGATIVE REPORT

Prior to completion of the investigative report, the Title IX Coordinator will send to each party and the party's Advisor, if any, a copy of the draft investigation report and the evidence obtained as a part of the investigation that is directly related to the allegations raised in the Formal Complaint, including the evidence upon which the University does not intend to rely in reaching a determination regarding responsibility. This evidence will also include evidence in support of or against a party's position, whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to the conclusion of the investigation. The evidence will be provided to each party on the same basis, whether in electronic format or hard copy. The parties will each have 10 calendar days to submit a written response, which the investigator will consider prior to the completion of the investigative report. The parties may elect to waive the full 10 days.

Either party may suggest additional witnesses and provide additional information after they review the draft investigative report. If additional witnesses or additional information is provided at this time, the Title IX Investigator will interview the additional witnesses and review the additional information.

A.4.5. INVESTIGATIVE REPORT

The Title IX Investigator will consider the responses to the draft investigative report, if any, and complete an investigative report that, at a minimum, sets out all the known facts, the disputed facts, summarizes all relevant evidence, and a

list of all parties interviewed. The Title IX Investigator will provide a copy of the report to the Title IX Coordinator, who then convenes the Title IX Review Panel.

The Title IX Coordinator will provide the final copy of the investigative report to each party in the same format at least 10 calendar days prior to the Review Panel. Either party may choose to respond to the final report within 10 calendar days from the date of delivery.

The Title IX Investigator and/or the Title IX Coordinator/Deputy Title IX Coordinator will meet with the Complainant to review the report. Following this meeting, the Title IX Investigator and/or the Title IX Coordinator/Deputy Title IX Coordinator will meet with the Respondent to review the report.

SECTION A.5: ADAPTIVE RESOLUTION

The Adaptive Resolution process is an optional, private, and confidential process. All persons present at any time during the Adaptive Resolution process are expected to maintain the privacy and confidentiality of this process and the related proceedings.

Adaptive Resolution is not available to resolve a Formal Complaint alleging sexual harassment when a University employee is the Respondent.

The parties may elect to pursue Adaptive Resolution at any time after a Formal Complaint is filed and before the Review-Panel proceedings begin. Adaptive Resolution may be pursued during intake; before the investigation commences; during the investigation; and after the investigation has concluded. When the parties agree to Adaptive Resolution, the Title IX Coordinator will provide the parties with written notice disclosing the allegations, the requirements of the Adaptive Resolution Process, and the reminders that Adaptive Resolution will pause the Formal Process and that any party has the right to withdraw from the Adaptive Resolution Process and pre-/resume the Formal Process at any time.

Adaptive Resolution may occur in three separate scenarios:

1. When the parties agree to resolve the matter through an adaptive resolution process, such as mediation or various restorative justice options;
2. When the Respondent accepts responsibility for violating this policy, desires to accept a sanction, and end the process; or
3. When the Title IX Coordinator can resolve the matter informally by providing Supportive Measures to remedy the situation.

A.5.1. ADAPTIVE RESOLUTION

All parties must consent to the use of Adaptive Resolution, which involves the mutually agreed upon resolution of an allegation. The Title IX Coordinator will ultimately decide whether Adaptive Resolution will be pursued. In doing so, the Title IX Coordinator will consider objective factors, such as:

- The severity, persistence or pervasiveness of the Prohibited Conduct;

- The nature or violence (if applicable) of the Prohibited Conduct;
- The impact of the Prohibited Conduct on the Complainant;
- The impact or implications of the Prohibited Conduct within the University community;
- Prior misconduct by the Respondent, including the Respondent’s relevant prior disciplinary history, at the University or elsewhere, and any criminal convictions;
- Whether the Respondent has accepted responsibility for the Prohibited Conduct;
- The maintenance of a safe, nondiscriminatory and respectful environment conducive to learning; and
- Any other mitigating, aggravating, or compelling factors.

The Title IX Coordinator will maintain the records of any resolution that is reached. Failure to abide by the resolution may result in disciplinary action. Neither party may appeal the outcome of alternative resolution.

A.5.2. RESPONDENT ACCEPTS RESPONSIBILITY

The Respondent may accept responsibility for all or part of the allegations listed in the Formal Complaint at any time. The Respondent’s intent to accept responsibility for all or part of the allegations will pause the process. The Title IX Coordinator will then determine whether Adaptive Resolution can be used and whether all parties are able to agree on responsibility, sanctions, and/or remedies. If an agreement is reached, the Title IX Coordinator promptly implements the agreed upon finding, sanctions, and remedies to address the harms, needs and obligations created by the situation (ending the harassment, preventing its recurrence, and remedying its effects).

The outcome is not subject to appeal. If the parties cannot agree on the terms of the resolution, the Formal Grievance Process will be initiated or will resume at the same point where it was paused.

A.5.3. ADAPTIVE RESOLUTION AGREEMENT

The Title IX Coordinator, with the consent of the parties, may navigate the implementation of an agreement to address and repair the alleged harm to the extent possible on behalf of both parties and the University, and that is as satisfactory as possible for all involved. The outcome of an Adaptive Resolution Agreement may not be appealed and the case is closed.

SECTION A.6: REVIEW PANEL

Following the submission of the final investigative report, the Title IX Coordinator will convene the Title IX Review Panel, unless the Formal Complaint is otherwise resolved through Adaptive Resolution. The Review Panel consists of the Review Panel chair and two additional EMU employees (one faculty member and one staff member) who have received Title IX training and training specifically related to the Relationship Violence and Sexual Misconduct Policy and its procedures.

The Title IX Coordinator and the Title IX Investigator will also attend the Review Panel meeting in order to answer questions and provide clarifications. The Review Panel process is consistent with the University's faith-based and religious-based principles rooted in the Anabaptist-Mennonite Christian tradition, including those principles of community, peacemaking, accountability, and discipleship (See [EMU and the Mennonite Faith Tradition](#)⁸⁷, [Life Together: Commitments for a Community of Learning](#)⁸⁸, [Mission, Vision, Values](#)⁸⁹).

The Complainant and the Respondent will be simultaneously notified of the composition of the Review Panel by the Title IX Coordinator and have the right to raise any conflicts of interest.

A.6.1. REVIEW PANEL PROCEEDINGS

The Review Panel process provides each party an objective evaluation of all relevant evidence. The Review Panel will not make credibility determinations based on a person's status as a complainant, respondent, or witness. The Review Panel will meet separately with the Complainant and the Respondent. An advisor may attend the Review Panel but may not participate in the panel process. Either the Complainant and/or the Respondent may choose not to attend the Review Panel. The Review Panel will proceed regardless.

The chair of the Review Panel will inform all persons present that the proceedings are being recorded for reference purposes only. The recording will be destroyed at the conclusion of the case, after the deadline for and/or completion of an appeal process, and will be available to each party for inspection and review during the Appeals Board process, if applicable.

Prior to the Review Panel proceeding, the Complainant and/or the Respondent may submit relevant questions and follow-up questions for the Review Panel to consider asking the other party or witnesses as a form of cross-examination or other questioning. Review panel members may also ask their own relevant and follow-up questions to the Complainant, the Respondent, and/or witnesses during their separate Review Panel proceedings. Only relevant questions may be asked of a party or witness.

Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents about the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent. If the Chair decides that a question submitted by either party is not relevant, the Chair must explain to the party the decision to exclude a question as not relevant.

⁸⁷ <https://emu.edu/about/faith-tradition>

⁸⁸ <https://emu.edu/about/life-together>

⁸⁹ <https://emu.edu/president/mission>

Evidence gathered during the investigation will also be available for each party to access during the Review Panel proceedings.

The Complainant and/or the Respondent may also request to give testimony to the Review Panel during their separate Review Panel hearings. If a party or witness does not submit to questioning by the Review Panel, the Review Panel must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the Review Panel cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the Review Panel proceeding.

A.6.2. REVIEW PANEL OUTCOMES

A.6.2.1. Determination Regarding Responsibility

The Review Panel will make a finding to determine whether or not a violation of the Relationship Violence and Sexual Misconduct Policy has occurred. This finding will be based on the standard of proof known as the preponderance of evidence. The Review Panel will make this determination based on the findings outlined in the final investigative report and the testimony heard.

At the conclusion of the Review Panel, the Review Panel chair will prepare a written summary of the proceedings. This documentation will include:

- Identification of the allegations of Prohibited Conduct;
- A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interview with parties and witnesses, site visits, methods used to gather evidence, and hearings held;
- Findings of fact supported by the determination;
- Conclusions regarding the application of the University's Code of Conduct to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions that the University imposes on the Respondent, and whether EMU will provide remedies to the Complainant designed to restore or preserve equal access to the University's educational program or activity; and
- The University's procedures and permissible bases for the Complainant and Respondent to appeal.

The Review Panel chair will deliver the panel summary to the Title IX Coordinator, who will provide the written determination to the parties simultaneously. The determination regarding responsibility becomes final either on the date that the University provides the parties with the written determination of the appeal, if an appeal is filed, or the date on which an appeal would no longer be considered timely, if an appeal is not filed.

In the case of dismissal, suspension or withdrawal while under investigation, notification will be sent to the parent/legal guardian(s), to the CARE Team, care

of the Dean of Students (Harrisonburg campus) or the deputy Title IX Coordinator at the Lancaster (PA) site, in order to coordinate in a confidential manner with various offices on campus (University Registrar, Financial Aid, etc.).

A.6.2.2. Possible Sanctions

If the outcome of the Review Panel proceeding results in a determination of responsibility, by a preponderance of the evidence, the Review Panel will decide between a number of different outcomes for the Respondent(s).

A Formal Complaint may result in one or more of the following possible sanctions, based on the facts of the case and the considerations listed above:

1. In-school, temporary, or indefinite suspension/disciplinary withdrawal;
2. Dismissal;
3. Probation, with specific lengths being determined during the staff review;
4. Loss of University employment or volunteer position;
5. Loss of University resources or services;
6. No contact orders;
7. Removal from dorm or other campus buildings;
8. Community services;

1. Application of a behavioral contract;
2. Alcohol and/or drug assessment and recommendations;
3. Exclusion from co-curricular or leadership activities;
4. Completion of issue-relevant education activities;
5. Mentoring for regular relevant educational conversations;
6. Fines;
7. Monetary or other restitution;
8. Referral to counseling;
9. Transcript notation.

A prominent notation will be placed on the Respondent's academic transcript if the Respondent is suspended from, permanently dismissed from, or withdraws from the University while under investigation for an offense involving sexual harassment, as required by [Virginia state law](#)⁹⁰. In compliance with [Virginia state law](#)⁹¹, a notation can be removed from a student's academic transcript if the student takes the actions identified in Virginia Code 23.1-900C as calling for such removal.

A.6.2.3. Remedies

If the outcome of the Review Panel proceeding results in a determination of responsibility, remedies will be provided to the Complainant. Remedies must be designed to restore or preserve equal access to the University's education programs or activities. Such remedies may include the same individualized

⁹⁰ <http://law.lis.virginia.gov/vacode/title23.1/chapter9/section23.1-900/>

⁹¹ <http://law.lis.virginia.gov/vacode/title23.1/chapter9/section23.1-900/>

services provided as Supportive Measures; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent.

SECTION A.7: APPEALS PROCESS

If the Complainant or Respondent does not agree with the findings and/or the outcomes, they may appeal the result to the Appeal Board. The appeal must be submitted in writing within three (3) business days following notification and should be directed to the Title IX Coordinator who will direct the appeal to the Appeal Board chair. Reasons for an appeal must be clearly stated and based on one of the following:

1. Relevant new evidence that was not reasonably unavailable at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
2. Procedural irregularity that affected the outcome of the matter; or
3. The Title IX Coordinator, investigator(s), or Review Panel members had a conflict of interest or bias for or against complainants or respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.

The Title IX Coordinator will simultaneously notify each party in writing within three (3) business days of the appeal when an appeal is filed. The Title IX Coordinator will then convene the Appeals Board, which will not consist of the same person(s) as the Review Panel.

The Appeals Board chair will review the reason for appeal to determine if it meets the above criteria. If the determination is made that it does not meet one of the above criteria, the request for appeal will be rejected and the chair of the Appeals Board will notify the requesting party that no appeal may be made. If the request for appeal does meet one of the above criteria, the Appeals Board chair will notify the parties in writing of the following:

1. Date, time, and location of the Appeals Board meeting, which will be scheduled within five (5) business days from the date of the request for an appeal, subject to extension for good cause;
2. The names of the Appeals Board members, and how to challenge participation by any member of the Appeals Board for bias or conflict of interest;
3. The grounds for the appeal request, including any new evidence provided.

The Complainant and the Respondent may respond to the disclosure of information or new evidence by contacting the Appeals Board chair within two (2) business days.

Following this two (2) business day response period, the Appeals Board will review the request for an appeal and the corresponding response or additional information offered by any party in addition to the final investigative report, the written summary of the Review Panel, and the appeal letter and will make a decision to either uphold or modify the outcome of the Review Panel.

The Appeals Board consists of the Appeals Board chair and two additional EMU employees (one faculty member and one staff member) who have received training related to Title IX and EMU's RVSM Policy and its procedures. The Title IX Coordinator and the Title IX Investigator will also attend the Appeals Board meeting in order to answer questions and provide clarifications.

The Appeals Board chair will prepare a letter reflecting the Appeals Board's decision of the appeal and the rationale for the result. The Title IX Coordinator will simultaneously provide the Complainant and the Respondent a copy of the letter of Appeals Board determination. The decision of the Appeals Board is final.

SECTION A.8: CONFLICTS OF INTEREST

At any time during the reporting, investigation, review, or appeals process, the Complainant, Respondent, witness(es), Title IX Coordinator, Deputy Title IX Coordinator(s), Title IX Investigator, Review Panel members, or Appeals Board members may raise conflict of interest or bias concerns.

In cases where the Complainant, Respondent, and/or witness(es) are related to or in close relationship with faculty, staff, or other employees of the University, or in cases where there is reason to believe that the investigation may not be impartial if completed internally, an outside investigator will be retained. Conflicts of interest will be evaluated by the Title IX Coordinator or designee. It is a requirement under this policy that any individual designated by the University as a Title IX Coordinator, Deputy Title IX Coordinator, investigator, Review Panel member, Appeals Board member, any other decision-makers, or any other person investigating, reviewing, or facilitating an Adaptive Resolution of a Formal Complaint not have a conflict of interest or bias for or against complainants or respondents generally, or the parties specific to a Formal Complaint.

SECTION A.9: TRAINING

The University will provide and require the Title IX Coordinator, Deputy Title IX Coordinator, HR Director, investigators, Review Panel members, Appeal Board members, any other decision-makers, and any other person investigating, reviewing, or facilitating an Adaptive Resolution of a Formal Complaint have had relevant training, to include training on the following, as applicable to their role in the process:

- The definitions ([Section 2\(see page 6\)](#)) related to this policy, including the definition of sexual harassment;
- The scope ([Section 3\(see page 14\)](#)) of this policy and the scope of EMU's education program and activities;
- How to conduct an investigation and grievance process including hearings, appeals, and Adaptive Resolution processes;
- How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias;
- Any technology to be used for the Review-Board and Appeals-Board proceedings;

- On issues of relevance, questions, and evidence, including when questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant; and
- Issues of relevance to create an investigative report that fairly summarizes relevant evidence.

Any materials used for training purposes must not rely on sex stereotypes and must promote impartial investigations and adjudications of Formal Complaints.

Appendix B: Rights of the Complainant

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At all times during the Title IX process, the Complainant has the following rights:

1. The right to investigation and appropriate resolution of all credible complaints of Prohibited Conduct made in good faith to University administrators;
2. The right to have all personally identifiable information kept private and only revealed as required by the Relationship Violence and Sexual Misconduct (RSVM) policy and law;
3. The right to be treated with respect by University officials;
4. The right not to be discouraged by University officials from reporting an incident of Prohibited Conduct to both on-campus and off-campus authorities;
5. The right to be informed by University officials of options to notify proper law enforcement authorities, including local police, and the option to be assisted by campus authorities in notifying such authorities, if the Complainant chooses. This also includes the right not to report, if this is the Complainant's desire, unless required by law;
6. The right to seek medical intervention and care;
7. The right to have reports of Prohibited Conduct responded to quickly, and with sensitivity, by all parties;
8. The right to preservation of privacy, to the extent possible and allowed by law;
9. The right to be informed of, and have, University policies and procedures followed without material deviation;
10. The right to notification of options for changing academic and living situations after an incident of Prohibited Conduct, if the accommodations are reasonably available. No formal report or investigation, either campus or criminal, need occur before this option is available. For a list of available accommodations, [see section 8.2](#)(see page 45);
11. The right to a no contact order against another student who has engaged in or threatens to engage in stalking, threatening, harassing or other retaliatory behavior that presents a danger to the welfare of the Complainant or others;
12. The right to bring an Advisor to all phases of the Title IX process and related policy process;
13. The right to be informed of available counseling, mental health, or student services both on-campus and in the community;
14. The right to be fully informed of the nature, rules, and procedures of the process and to a timely written notice of all alleged violations within the report, including the nature of the violation and possible outcomes;
15. The right to review the preliminary investigative report and offer additional relevant materials and relevant witnesses to be interviewed and considered before the final investigative report is created;
16. The right to review the final investigative report, subject to the privacy limitations imposed by state and federal law, at least two working days prior to a review panel;

17. The right to be informed of the names of all witnesses, except in cases where a witness' identity will not be revealed for compelling safety reasons;
18. The right to have reports heard by persons who have received annual Title IX and trauma informed training;
19. The right to identify and petition that any party be removed on the basis of bias and/or conflict of interest;
20. The right to a finding based on the preponderance of the evidence presented during the investigation process. Such evidence should be credible, relevant, based on fact, and without prejudice. For a definition of preponderance of evidence, see [Section 2](#)(see page 6);
21. The right to be informed in writing of the findings and outcomes, usually within five working days of the determination; and
22. The right to appeal the findings and/or outcomes, in accordance with the standards for appeal established in [Section A.5](#)(see page 55) of the RVSM policy.

Appendix C: Rights of the Respondent

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At all times during the Title IX process, the Respondent has the following rights:

1. The right to investigation and appropriate resolution of all credible complaints of Prohibited Misconduct made in good faith to University administrators;
2. The right to have all personally identifiable information kept private and only revealed as required by the Relationship Violence and Sexual Misconduct (RSVM) policy and law;
3. The right to be treated with respect by University officials;
4. The right to preservation of privacy, to the extent possible and allowed by law;
5. The right to be informed of, and have, University policies and procedures followed without material deviation; and the right to have an Advisor to guide and support them in the process;
6. The right to bring a Advisor to all phases of the Title IX process and policy related process;
7. The right to be informed of available counseling, mental health, or student services both on-campus and in the community, and other Supportive Measures (see [Section 8](#)(see page 43));
8. The right to a no contact order against another student who has engaged in or threatens to engage in stalking, threatening, harassing or other retaliatory behavior that presents a danger to the welfare of the Respondent or others;
9. The right to be fully informed of the nature, rules, and procedures of the process and to timely written notice of all alleged violations within the report, including the nature of the violation and possible outcomes;
10. The right to review the preliminary investigative report and offer additional relevant materials and relevant witnesses to be interviewed and considered before the final investigative report is created;
11. The right to review the preliminary and final report, subject to the privacy limitations imposed by state and federal law, at least two working days prior to a requested appeals hearing;
12. The right to be informed of the names of all witnesses, except in cases where a witness' identity will not be revealed for compelling safety reasons;
13. The right to have reports heard by persons who have received annual Title IX and trauma informed training;
14. The right to identify and petition that any party be removed on the basis of bias and/or conflict of interest;
15. The right to a finding based on the preponderance of evidence presented during the investigation process. Such evidence shall be credible, relevant, based on fact, and without prejudice. For a definition of preponderance of evidence, see [Section 2](#)(see page 6);
16. The right to be informed in writing of the findings and outcomes of any alleged relationship violence and/or sexual misconduct process, usually within five working days of the determination; and

The right to appeal the findings and/or outcomes, in accordance with the standards for appeal established in [Section A.5](#)(see page 55) of the RVSM policy.

Appendix D: Training and Prevention Education

Information on this page

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Campus Education Activities

EMU provides the following educational activities for the campus community:

1. SafeColleges - in accordance with federal regulations, all new and current students, faculty, and staff are required to complete this mandatory online awareness and education program at the beginning of each academic year.
2. NCAA It's On Us campaign - all student athletes receive annual training in topics related to sexual violence awareness and prevention
3. In-person training in Title IX regulations and university policies for all new faculty, staff, and students
4. Annual training for those involved in Title IX processes. All officials who conduct disciplinary proceedings related to complaints of sexual assault, domestic violence, dating violence, and stalking receive annual training on issues related to dating violence, domestic violence, sexual assault, and stalking, as well as how to conduct an investigation and a hearing process that protects the safety of victims and promotes accountability.

Campus Prevention Activities

EMU provides the following prevention activities for the campus community:

1. Green Dot bystander trainings - bystander trainings are available to all students, faculty, and staff. Bystander overviews are provided to each incoming class as part of orientation

Additional annual awareness and prevention activities (such as Take Back the Night) are planned by EMU's student prevention organization and the Coordinated Community Response Team.

Appendix E: Confidential Resources

[Relationship Violence and Sexual Misconduct Policy](#)(see page 2)
[Return to Table of Contents](#)(see page 2)

Harrisonburg Confidential Resources

Counseling Services

counselingservices@emu.edu(see page 68)- **540-432-4317**

Allison Collazo, Director of Counseling Services

Counseling Services provides free, individual counseling sessions to any EMU student. Survivors of current and/or past sexual violence can use this confidential service to process events, begin the healing journey, and receive referrals to other campus or community resources.

Health Services

healthservices@emu.edu⁹² - **540-432-4308**

Irene Kniss, Director of Health Services

Health Services provides a confidential space to discuss health concerns related to experiences of sexual violence. STI testing and pregnancy testing are available via self-pay or insurance billing. Transportation vouchers are available for students who need to access off-campus medical services and do not have their own transportation.

Campus Ministries

campusministries@emu.edu⁹³ - **540-432-4115**

Brian Martin Burkholder, University Campus Pastor

Campus Ministries, including EMU's seminary campus pastor, provides a safe, confidential space for students to process experiences, receive spiritual support, and access campus and community resources.

Sexual Violence Prevention Services

leda.werner@emu.edu⁹⁴ - **540-432-4325**

Leda Werner, Sexual Violence Prevention Coordinator

Located in the Counseling Services building, the Sexual Violence Prevention Coordinator provides confidential support to survivors who are seeking a safe

92 <mailto:healthservices@emu.edu>

93 <mailto:campusministries@emu.edu>

94 <mailto:leda.werner@emu.edu>

space to process, information on university procedures and services, and referrals to community resources.

Lancaster Confidential Resources

Samaritan Counseling Ctr.- 717-560-9969

YWCA Sexual Assault Prevention & Counseling Center- 717-392-7273

Washington DC Confidential Resources

Brookland Pastoral Counseling Center 646- 852-7404

National Veterans Crisis Line: 800-273-8255

Appendix F: Transcript Notation

A transcript notation will be made as the result of a substantiated finding of responsibility of sexual violence perpetrated against a person's will or against a person incapable of giving consent, and will be placed on the respondent's academic transcript if the respondent is suspended from, permanently dismissed from, or withdraws from the University while under investigation for an offense involving sexual violence, as required by [<http://law.lis.virginia.gov/vacode/title23.1/chapter9/section23.1-900/>] [Virginia state law](#)⁹⁵.

Sexual harassment for purposes of transcript notation at EMU is defined by Title IX of the Education Amendments of 1972 and its implementing regulations. For Title IX-related purposes, sexual harassment is defined as follows:

1. Quid pro quo;
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, *and* objectively offensive that it effectively denies a person equal access to the University's educational program or activity;
3. Sexual assault, dating violence, domestic violence or stalking as defined in the Clery Act and the Violence Against Woman Act

In addition to the above, the following conditions must also be met:

- Misconduct occurs within the school's program or activity;
- Misconduct occurs in the United States in/on/at a campus owned/controlled space

That said, the University will respond to sexual violence and misconduct that does not meet the definition of a Title IX violation but violates other University policies, such as prohibited conduct under EMU's RVSM Policy. These violations may also be tracked on transcripts.

Outcome letters are shared with the complainant, the respondent, and any named advisors, and serve as the conclusive document guiding the University's actions moving forward on a given case. Any definitions referenced throughout a procedure and in such case documentation, including the named policy violations, are outlined in the policy that is in place at the time and guide the University's handling of a matter.

If the respondent is found responsible under the RVSM Policy, including under the Title IX definition of sexual harassment, and after all rights to appeal have expired under the RVSM Policy, the respondent will receive a separate written notice from the University Provost that the respondent's suspension, permanent dismissal, or withdrawal will be documented on the respondent's academic transcript.

The Provost will communicate to the University Registrar the wording of the notation to be added to the respondent's transcript.

Additionally, in compliance with Virginia state law, a notation can be removed from a student's academic transcript in either of the following two circumstances:

1. Suspension. Following the conclusion of the student's suspension after being found responsible under the RVSM Policy, the transcript notation will be removed from the student's academic transcript upon (a) completion of the term and any conditions for the student to return to the University; and (b) upon the student's graduation or withdrawal from the University as long as the student is in good standing at the time of the graduation or withdrawal. Good standing is defined to include that the student has complied with the conditions of the suspension, and has not since been found responsible for violating any other University policy or rule, and has not been barred or banned from any other University activity.
2. Time. After three years or more have passed from the effective date of the student's dismissal or withdrawal from the University, provided that the student establishes good cause for the expungement. Good cause shall be defined to mean a compelling and necessitous need for the expungement.

⁹⁵ <http://law.lis.virginia.gov/vacode/title23.1/chapter9/section23.1-900/>

Expungement will be granted upon the submission of a written request and supporting documentation from the student to the university Provost. The Provost, Title IX Coordinator and the Dean of Students will then review the student's record, including the RVSM Policy-related record and the student's written request and supporting documentation, to determine whether or not the student has met the above criteria. The student will receive written notice of the decision as to whether or not the expungement is granted. The decision, made jointly by the Provost, Title IX Coordinator, and the Dean of Students, will be final. Any decision to expunge a transcript notation will be communicated to the University Registrar by the Provost.

For FERPA reasons, the Virginia statute does not require notification to the complainant when the transcript notation is made or if/when when it is expunged, because transcript notation is not a sanction that directly relates to or involves the complainant.